Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

Saturday, April 2, 1955 Vol. CXIX. No. 14

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

BOROUGH OF MIDDLETON

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with experience in municipal law and practice for the above appointment at a salary of £1,087 per annum rising by annual increments of £35 to £1,221 per annum. The successful applicant will be required to pass a medical examination.

Applications, stating age, full details of experience and qualifications, and the names and addresses of three persons to whom reference can be made, are to be sent to me not later than Saturday, April 9, 1955.

Canvassing, directly or indirectly, will disqualify.

FRANK JOHNSTON,
Town Clerk.

Town Hall,
Middleton, near Manchester.
March 18, 1955.

BOROUGH OF SUTTON COLDFIELD

Assistant Solicitor

APPLICATIONS are invited for the above appointment. Salary £780—£900 according to experience. Previous experience with a local authority not essential. Housing accommodation available. Applications, stating age, qualifications and experience, and the names of two referees, must reach me in envelopes endorsed "Assistant Solicitor" before noon on Tuesday, April 12, 1955.

R. WALSH,
Town Clerk.

Council House,
Sutton Coldfield.

NOTTINGHAMSHIRE COUNTY COUNCIL

Resident Housefather

APPLICATIONS invited from single men with suitable experience for the post of Housefather at The Woodlands, Bulwell, Nottingham. Responsibility for children's recreational activities, supervision of grounds and helping in the Homes as necessary. Salary £395 per annum × £15 to £455, plus £15 per annum for recognized qualification, less £108 per annum for board residence. Particulars and application form from the Children's Officer, Shire Hall, Nottingham.

A. R. DAVIS,
Clerk of the County Council.

COUNTY BOROUGH OF DARLINGTON

Assistant Solicitor

APPLICATIONS are invited for the above appointment at a salary in accordance with age and experience within the current N.J.C. salary scale namely £690 × £30—£900 per annum. Previous experience in the office of a local authority not essential. No Council housing accommodation is available. Applications, giving the names of two referees and endorsed "Assistant Solicitor," must reach me before noon on April 16, 1955.

H. HOPKINS,
Town Clerk.

11, Houndgate,
Darlington.

CITY OF NOTTINGHAM

Justices' Clerk's Office

APPLICATIONS are invited for the appointment of male shorthand-typist at a salary within the range £550 × £30 — £610 per annum. Applicants will be required to type depositions in Court, and undertake other clerical duties. Experience in the work of a Justices' Clerk's Office would be an advantage.

The appointment will be superannuable, and will be subject to one month's notice on either side, and the successful candidate will be required to pass a medical examination.

Applications, stating age and experience, together with copies of three recent testimonials, must reach the undersigned on or before April 13, 1955.

G. D. YANDELL,
Clerk to the Magistrates' Courts Committee.

Guildhall,
Nottingham.

SOMERSET COUNTY COUNCIL

ASSISTANT SOLICITOR required. Commencing salary within the scale £690 × £30—£900, but not less than £780 for two years' legal experience. Apply stating date of admission, qualifications and experience, etc., and names of two referees, by April 13, 1955. Canvassing disqualifies.

E. S. RICKARDS,
Clerk of the County Council.

County Hall,
Taunton.

CITY OF BRADFORD

Deputy Clerk to the City Justices

APPLICATIONS are invited for the appointment of Deputy Clerk to the Bradford City Justices. The salary payable is £1,266 13*s.* 4*d.* per annum, rising by annual increments of £33 6*s.* 8*d.* to £1,433 6*s.* 8*d.* per annum. Applicants should have considerable experience in magisterial law and practice and be able to take complete control of the staff and office in the absence of the Clerk.

The post is superannuable and subject to a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than April 30, 1955. Envelopes should be marked "Deputy Clerk."

FRANK OWENS,
Clerk to the Magistrates' Courts Committee.

Town Hall,
Bradford.

SURBITON BOROUGH COUNCIL

Legal Assistant

APPLICATIONS are invited for the appointment of Legal Assistant (unadmitted). Salary Grade APT/II—£590 a year rising to £670 by increments of £20 (including London "weighting" allowance). Consideration will be given to placing the successful applicant in a position on the scale appropriate to his qualifications and experience. Applicants must have had conveyancing experience in a solicitor's office, or in the office of the clerk of a local authority, and be capable of dealing with mortgages of house property with the minimum of supervision.

Applications, giving names and addresses of two referees, must be sent to the undersigned by April 16, 1955.

JOHN H. A. CRUNDELL.
Town Clerk.

Council Offices,
Surbiton.

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NOTES OF THE WEEK

The Constitution of Malta

We spoke some time ago about a suggestion that Malta, now a Crown Colony, should have its constitutional position changed, by its being brought into the United Kingdom. At first sight this is a startling notion, more analogous to the French habit of incorporating overseas territories into " metropolitan France " than to British practice. The United Kingdom comprises England and Wales, Scotland and Northern Ireland. The union has come about over the centuries, the relationship between England (where the capital of the United Kingdom has always been situated) and other kingdoms forming the union developing in different ways. The union as now existing dates back no further than the reign of George III, and the position of Ireland has been altered by legislation of the last few years. Despite these alterations, and despite its comparative modernity, it is thought of by everyone as something long established, with a history and tradition of its own. Even within the British Isles there are ancient possessions of the Crown, namely the Channel Islands which do not form part of the United Kingdom, and have no desire to do so. There is also the Isle of Man, for which the Imperial Parliament (or Parliament of the United Kingdom) can legislate, without the special constitutional formalities which are necessary, by custom handed down from the Duchy of Normandy, when Imperial legislation is to be applied to the Channel Islands. To bring into the United Kingdom an island in the Mediterranean when islands in the English Channel and St. George's Channel have not been brought in, would be a bold step, and a surprising step as well—not the less at this moment when French possessions in the neighbourhood are seeking to break loose, and Cyprus (or an influential section of the people there) wants to break away entirely from the British connexion. Inclusion of Malta in the United Kingdom is, however, a step that the Maltese labour party, which won the last election, has proposed in its party programme. From the point of view of the British constitutional lawyer, it is hard to see any objection, if inclusion is really what the Maltese people now desire. Malta would, like Northern Ireland, have a few members in the House of Commons, and, again like Northern Ireland, would preserve its own legislature and its own government for handling its local problems. The only problem we can see as involving theoretical difficulty is whether the members from Malta would take part in the proceedings of the (London) House of Commons only when Maltese business was before the House, or would be full members like those coming here from Northern Ireland. The latter is probably what the Maltese labour party has in mind, though there is a precedent the other way in the bailiwick of Guernsey, where Alderney and Sark, each of which has its own legislature with direct access to Her Majesty, have also representatives in the States of Guernsey, taking part in Guernsey legislation and debates when the interests of their respective islands are involved.

Care and Possession

The Adoption Act is an enactment the general scheme of which is to confer benefits, and a great part of it can be construed with less strictness than must be applied in the case of a penal statute. Adoption is generally desirable, though Parliament has wisely provided certain safeguards and imposed some restrictions.

We have always thought that the expression " care and possession " in s. 2 (6) of the Act may be given a liberal interpretation, as otherwise a certain number of perfectly suitable adoptions would not take place.

The infant must have been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order. If this meant that the infant must have been for the whole of that time under the same roof as the adopter, that would be quite simple in the many cases in which very young children are being adopted, but it would present obstacles in the case of children at boarding school, or young people at work and away from home. These are not usually at home for three months at a time.

Our opinion has been that an infant may be in the " care and possession " of those who are bringing him up as if they were his parents, if the relationship is shown to be exactly like that of parent

and child, the adoptive parent exercising the normal kind of parental control. This opinion was fortified by the Scottish decision in the case of *A.* v. *Petitioners* (1953) S.L.T. (Sh. Ct. Rep. 45). A still more recent case is *G.* v. *Petitioners* (1955) S.L.T. (Sh. Ct. Rep. 37), noted in *Butterworths Weekly Law Sheet*. The grandmother of the infant, whose mother had died, was granted an adoption order. The child had been in hospital for more than three months, but had previously resided with the petitioner.

The Future of Approved Schools

Approved Schools Gazette contains an article with the rather startling title "Are Approved Schools on the Way Out?" It had never occurred to us to ask such a question, and so we read the article with considerable interest. It is by Mr. F. R. George of Oakbank, Aberdeen, and is printed in the *Approved Schools Gazette* by permission of the *Journal of the Scottish Schools Staffs Association*.

Mr. George begins by stating that there is evidence from a variety of sources to show that there is a movement away from approved schools as a means of combating the problem of juvenile delinquency. Whereas the emphasis used to be on punishment this gave way to treatment and this tendency was increased through the influence of Sir Cyril Burt's work "The Young Delinquent." This book, says Mr. George, marked the real start of what has become a flood of research literature on the subject of juvenile delinquency. From all this the article goes on, two important things have emerged, (1) each child is an individual and his case is an individual one, (2) each child is part of his own home, the ties are enormously strong even when the home is what we may call a "bad one." "Current tendencies," says Mr. George, "show a desire to treat the child and the home simultaneously "at the home"; or in the extreme cases to take the child from one home and transplant him in another home where existing roots can grow, but it is not considered possible to do this in an institutional environment." Schools have been made less institutional, divided into houses with housemasters and housemothers, but the ideal, which it is pointed out is being adopted to some extent in England, is the small foster home.

Mr. George agrees that in an approved school a child may have found what he calls an emotional holiday, which may have done him good, but thinks the child may have developed new roots there which have to be torn up when he leaves the school. This, of course, means that there have been two processes of uprooting or partial uprooting. Some people, he goes on to say, are quite convinced that mass treatment or individual treatment away from the home is unlikely to succeed. Others again see individual treatment within an institution as a good treatment and are not unduly disturbed by the emotional stress created when the child leaves the institution.

The Alternative

Mr. George sees a tendency to consider the approved school as the appropriate treatment for only a small percentage of the total of delinquent children, and to hold that it fits only some of those already delinquent and does nothing to cure delinquency or to prevent delinquency.

It is pointed out that in England there has been a considerable closing down of approved schools, and that in Scotland two schools have recently surrendered their certificates. In England, Mr. George says there has concurrently been an enormous increase in the provision of foster homes, family help, and improved probation and similar sources of facilities. For himself, he regards the approved schools service as we now know it as certainly on the way out, and he leaves for another article the question of what will take its place.

For ourselves, we hold the view that there will always be a need for approved schools. It is quite true that schools close down, and that it sometimes appears that the demand for places is steadily diminishing. That kind of thing has happened before and has been followed some time later by a marked increase in approved school orders and, for the time, insufficiency of accommodation. The alternative of the provision of foster homes is attractive, but it is, and is likely to continue to be, quite impossible to find foster parents for a considerable number of boys and girls. For these it must be either probation or an institution. The probation system is increasingly used and meets with marked success in the majority of cases, but it cannot always be used, and the approved school supplies the need. Many improvements have been made in the schools themselves and this process will go on. We can look back at the old reformatory and industrial schools, which came in for much criticism, and remind ourselves that in the light of experience and a changed outlook they have become the approved schools of today which, in most cases are achieving good results, and in particular are sending out boys and girls of a far less institutional type than those of a generation or two ago. That the home should be improved while the child is away is by no means impossible, and in fact this kind of work is being undertaken by social workers. No doubt the ideal is the foster home, but the approved school is often a necessary and satisfactory alternative.

The Justices' Reasons

Justices and their clerks are aware that on an appeal to the Divorce Division from the decision of a magistrates' court the court requires that copies of the reasons for the decision of the justices must be supplied, and that there is a duty upon the clerk to obtain those reasons and to supply copies of them.

A direction has now been given by Roxburgh, J. (*see* Practice Note at [1955] 1 All E.R. 784) that in case of an appeal under the Guardianship of Infants Acts from a county court or a magistrates' court to the High Court the appellant's solicitors are to apply for a statement of the reasons for the decision complained of, to be lodged with the judge's clerk at the time of obtaining an appointment under Order 55A, r. 6 (4) of the Rules of the Supreme Court.

It becomes necessary therefore for justices to formulate their reasons in case of an appeal, and for the clerk to obtain those reasons if they were not given and noted at the time of the decision.

Cars on Pavements

While the newspapers tell of projects for new many-storeyed garages in London, and agitate for a reduction of the charge made in garages for accommodating cars from day to day, and while Parliament itself is wrestling with the American suggestion of parking meters in the streets, the scandal of car parking in the central areas of London gets worse from day to day. The same is true of large provincial towns, and smaller towns as well: we can think of several where the business man arriving in a car cannot get to his own office, or to premises he has occasion to visit, because the street is cluttered up with other people's vehicles left there for hours at a time. Bad as is the position produced in provincial towns, chiefly by sheer selfishness, it is as nothing compared with the position which has been allowed to come about in central London, where a large proportion of the streets have been reduced to one way traffic, or to two way traffic conducted under difficulties, through police acquiescence in the use of two strips of the carriageway, one at each

side, for private parking. The yellow bands, which a few years ago were supposed to indicate streets in which parking was prohibited, have become a farce—no motorist pays attention to them. The more recent plan, of putting at the edge of the pavement police notices saying that the parking or delivery of goods is forbidden on this or that side of the street on odd or even dates, was respected slightly better for a time, but common observation shows that today motorists commonly ignore these also, and that often the police do not make any serious attempt to enforce their own notices. The utmost they have done appears to be to encourage motorists, or it may be even to suggest to motorists, that cars should be parked half on the carriageway and half upon the pavement. Some of these remain for hours, while lorries are driven on the pavement to deliver goods, on the unimpeded side of a narrow street, because a third or so of the carriageway is blocked by the row of parked cars along the other side, and if the lorry halted in the proper place no other vehicle could get past. This misuse of the pavements does allow a little more space in the carriageway for moving traffic, but at the cost in many central London streets of reducing the footway in its turn to one way traffic for pedestrians.

We can find no statutory authority for this, which we believe to be totally illegal: *see Lade* v. *Shepherd* (1735) 2 Stra. 1004; *Burgess* v. *Northwich Local Board* (1880) 45 J.P. 256; *Salt Union, Ltd. and Droitwich Co., Ltd.* v. *Harvey & Co.* (1897) 61 J.P. 375. We may be excused (we hope) if we have overlooked some statutory provision or statutory instrument, seeing that the Lord Chief Justice, speaking in the House of Lords on March 15 (*The Times*, March 16, 1955) forgot that police cars enjoy the same concession in regard to speed limits, under s. 3 of the Road Traffic Act, 1934, as fire engines and ambulances. But we do not think that we have overlooked anything. Highway authorities in London and elsewhere have certain powers of adjusting the widths of the carriageways and actual paved footways, subject to which powers the public take the street as they find it, that is to say as originally dedicated, part footway and part carriageway. There is no legal warrant, so far as we can find, for using part of the public footway as a parking place; driving on to it to deliver goods, or stationing cars upon it, is a contravention of s. 72 of the Highway Act, 1835, which ought to be enforced by the metropolitan police, but can be enforced by any other person: *Back* v. *Holmes* (1887) 51 J.P. 693.

We read of two prosecutions in March, by the British Transport Commission, of motorists who left cars parked on railway property at St. Pancras and King's Cross. Convicting and imposing fines, the learned magistrate at Clerkenwell, Mr. T. F. Davis, remarked that "it does seem such impudence." We cannot think of any better description for the parking of cars upon the pavements of the public streets.

Canvassers for House Ownership

For many years building societies have been rivals to each other and to other outlets for investment capital, and the biggest among them have spent lavishly on competitive advertisement. We hear of a move, new at least to us, from south-west London. This is the employment of canvassers, going from door to door after working hours, asking householders whether they would like to own their houses. This may be a good thing; we have an open mind, and certainly thrift is to be encouraged. On the other hand, the method is reminiscent of that employed by industrial insurance companies; there may be a question whether money spent on canvassers might not be better used in reducing rates of interest to borrowers or increasing dividends to depositors, either of which would encourage business. The canvassers will presumably not call at council houses but primarily at those of the middle classes or lower middle classes, and in those classes there is a high proportion of owner occupiers, and of occupiers who are not yet owners, but are becoming owners through paying to building societies already. It looks therefore as if there may be waste of effort, in other words a waste of money, the cost of which must in the long run fall on the consumer.

Defects in Town and Country Planning Procedure

A case has recently come to our notice illustrating the unsatisfactory position in regard to appeals under the Town and Country Planning Act, 1947.

A landowner acquired the freehold of a house and garden at the end of 1953. Adjoining the garden and only about 20 *yds.* from the house was a piece of land scheduled at that time on the County Development Plan as *agricultural* land.

The landowner enjoyed the land until 1955 when to his sudden consternation he read in the local newspapers the proceedings of a debate in the local council. Those proceedings related to the allowing (on terms) of an appeal against refusal to grant development permission for the erection of a petrol station on the adjoining piece of land in question. This came so to speak as a "bolt from the blue" for him and was the first intimation that such substantial (and unwelcome) alterations were pending immediately next door.

It appeared upon inquiry that the local R.D.C. (exercising delegated planning functions on behalf of the county planning authority) had refused to permit the piece of land to be used for the petrol station. They took this course for two reasons (*a*) on traffic grounds (the plot concerned adjoined a busy trunk road) and (*b*) because the locality was already adequately served with filling stations. There was, however, a disagreement between the R.D.C. and the county planning authority (who were prepared to grant the necessary permission subject to satisfactory access to the trunk road) and the issue was, therefore, referred to the area planning committee, which decided in favour of the R.D.C. The applicant for permission then appealed to the Minister who decided to deal with the matter on the written representations of both parties and *not* to hold a public local inquiry. In the upshot the Minister allowed the applicant's appeal subject to certain stipulations as to access.

As matters stand at present, therefore, the landowner can now expect the field next door to his house to be the site of a busy trunk road petrol station with attendant noise, smells and utilitarian appearance.

There can be no doubt that any one of us would consider this serious damage to his property if it happened to our own house. At no time, moreover, had the landowner had the opportunity of being heard on the matter. It would presumably have been different if the Minister had instead of proceeding on written representations decided to hold a public local inquiry. Unhappily the anonymous character of this type of procedure effectually prevented the adjoining landowner coming to hear of the matter at all.

It is a fundamental tenet of ours that no man shall be deprived of his property or suffer damage in respect of it without having a fair opportunity of being heard on the matter.

The relevant procedure here seems to rest less on a statutory basis than upon Ministerial practice. Provision to safeguard the subjects' rights of property mentioned above should be written into the statute-book as soon as new town and country planning legislation comes along.

STATUTORY DEFENCE?

By D. LOWE, LL.B. (LOND.)

Mr. Jones was worried. He was before the magistrates' court again, charged with selling intoxicating liquor without a justice's licence. He had been before the same bench, charged with the same offence, on two previous occasions, and had been found guilty on each occasion.

The magistrates' clerk carefully and precisely went through the procedure laid down by s. 25, Magistrates' Courts Act, 1952, and eventually he said to Jones," You may have a right to claim trial by a jury." The implications of this right were explained to him, and then the clerk said, " If you have that right, do you wish, instead of being tried summarily, to be tried by a jury ? "

Mr. Jones looked at the bench. The same old faces looked back at him. He imagined that they remembered him as well as he remembered them. " Yes, I'd like to be tried by a jury," he said.

"Has the defendant been convicted on two previous occasions of selling intoxicating liquor without a justice's licence ? " asked the clerk. " Yes," came the reply.

Depositions were taken, a *prima facie* case was established against Mr. Jones, and he was duly committed for trial to the next quarter sessions.

In the local paper that evening, a short sentence read, "Albert Jones, who was charged with selling intoxicating liquor without a justice's licence, elected to go for trial and was committed to the next quarter sessions."

Mr. Brown read the paper on his way home from work; he was an earnest student of the rights and duties of the citizen, and had read s. 25, Magistrates' Courts Act, 1952, most carefully. He was also aware that a person who sold intoxicating liquor without a justice's licence could only be imprisoned for more than three months, and therefore have a right to claim trial by jury, if he had been convicted of the offence on two previous occasions.

Jones duly appeared at the quarter sessions ; Mr. Brown also appeared as a juror, and was duly called to officiate in Jones' case. Mr. Jones had no objection, for the two men were strangers.

The jury duly retired, and were in some doubt whether or not Jones was guilty. Their doubts appeared to be resolved when Mr. Brown said, " He's obviously guilty. He can't be tried by a jury unless he's committed this offence twice before, and been found guilty each time." He explained the point to them at some length. The foreman was, however, rather dubious. He said, " What you say may make it much more likely that he is guilty. But you know, it wasn't in the evidence, and we shouldn't take into account anything but the evidence."

"Ah ! " said Mr. Brown, " this has nothing to do with the evidence. This is the law, and everyone is presumed to know the law."

" Yes, but the recorder never mentioned this, and I think we should get his direction on the point," said the foreman. The recorder was asked, "We understand that to claim trial by jury for this offence, the accused person must have been found guilty of it twice before. This being the law, there can be nothing improper in our knowledge. However, we feel that despite any efforts on our part to dismiss these previous convictions from our minds, it is still possible that we shall be unfairly prejudiced against the accused person. It is possible that any jury could be presumed to have this knowledge of the law. We ask your directions."

The recorder considered the point at length. The presumption that any jury would know the law was, at least, possible. There had been no improper direction by him, nor had any evidence of previous convictions been given. If found guilty, the accused person could always appeal, and the Court of Criminal Appeal would hardly quash the conviction, as that would give a *carte blanche* to anyone who committed an offence of this nature a sufficient number of times to give rise to a right to trial by jury. He therefore directed the jury to consider only the evidence they had heard, and the law as he had explained it in his summing up, and to disregard any other matters.

Mr. Jones was found guilty, and spent the next few months very usefully indeed in perusing the Magistrates' Courts Act, and discovering the meaning of the word " *lacuna*."

CONVERSATION IN A CLUB: OR LATIN, A LIVING LANGUAGE

By " ESSEX "

" When I saw," said the Law Publisher, " that we had today dispatched by express passenger train as *per* your valued telegram one copy Smith's Latin Dictionary and one copy Brown's Law Lexicon, I smelt a story, and, as I am related, er, sort of, to the personal secretary of the town clerk of Suberbtown, I followed it up. I'll make you a present of what I found."

" Yes ? " said the Editor, and his tone was Reserved. For he had no Experience of Free Presents from this Source. That his reserve was Justified is another Tale which need not concern the Gentle Reader today.

The Publisher explained that it had formerly been the Custom of one Member of this Council, an Alderman called Poughilly-Horty, to Affect a Classical Education and quite half his speeches were unintelligible to his Fellows. They Resented the Implication that this was due to some Want or Deficiency in their Education and prepared for war. The compact was that each should look up an apt Legal Tag such as they, from time to time, suffered from the lips of their Learned Clerk on their asking him a Question which he had not been able to Anticipate and Look up First. The debate at the next Council meeting resulted in an application for Up-Grading from the Committee Clerk who, being unable to record the Gist of the Speeches, had perforce to record them *in toto* and was now in Bed with a Housemaid on his knee or a callous on his Pen-finger (reports varied).

" I have obtained a copy of the Minutes " said the Publisher, " at a cost known only to Myself—and the—er—Secretary. I will read it to you."

Forthwith, the Editor, with Great Presence of Mind, seized the Documents in haste and his left hand and rushed from the Club crying " Great Snakes, I'll borrow that, I'm late for my appointment with . . ." But the name of the Great Man for whom even an

Editor would cut short his post-meridian Nap was lost in the distance and (later) the Publisher's whole staff suffered from the thwarting of his Unselfish Urge to Share a Good Thing.

The Editor, over his (first) mid-afternoon cup of tea, was forced to admit that he had Entertained Unworthy Suspicions. The Situation Depicted was not without a certain Humour as the following extracts, used in his Newspaper, may show. It will at any rate appear why the Unfortunate Committee Clerk needed the Assistance for which he telegraphed, before he could reproduce his shorthand on a typewriter.

The Town Clerk reported that a writ had been served *in re* the Council's proposed sale of the chapel in the now disused Cemetery. It was claimed that the advertisement stating that the building was a desirable residence situated in a neighbourhood where none of the residents suffer ill-health was so misleading as to vitiate the contract, and the purchaser alleged that he was not bound thereby.

Alderman March moved that the matter be discussed *sub rosa* but on the vote being taken the Mayor, stating that he spoke *ex cathedra*, ruled that the decision was *aliter* and looking pointedly at Alderman Poughilly-Horty gave it as his opinion that he would have expected that particular suggestion to come *aliunde*.

Councillor Smith reminded Members that *falsa demonstratio non nocet* especially where there was no *mala fides*, and said that if there were any *ambiguitas* it was *patens*, not *latens*. The rejoinder (that what was *latens* was the *corpus delicti*) was ruled out of order as an *ignis fatuus*.

Alderman Brown, moving that *post litem motam* the Council should reconsider their decision and ask the plaintiff to enter a *nolle prosequi*, said *verbum sat sapienti*, and therefore *cadit quaestio* and *rebus sic stantibus*.

Councillor Mrs. May said she was *cestui que trust* that *pendente lite* the Council would *per contra* maintain their position and *ex post facto* be proved *de jure* to have given an honest description. Councillor Mrs. June, speaking through the chair to her *vis-a-vis* said that was the very *factum probandum*.

The Mayor wanted no more *circulus in probandum* and said it was a *sine qua non* that they get some constructive *tabula in naufragio*.

Alderman Jones said that *per se* the matter was not one to give rise to anxiety. The trouble in the Council was that that *omnia praesumuntur rite esse acta* but if they looked carefully they would see it wasn't so. They should *litem lite resolvere* and, holding the advertisement a *non est factum*, counter-claim against the town clerk who had issued it before the Committee had approved the wording: in fact they had not approved it to that very day (extract from the local press reads "Uproar, making it difficult for your correspondent accurately to hear the learned town clerk's rejoinder: it sounded like '*nullius filius*'").

The Mayor ruled the suggestion a *tertium quid*, *humanum est errare*, the town clerk was their agent, and they should defend their actions *sans recours* to blaming a man whose position prevented him from answering back. He reminded the last speaker that *qui sentit commodum*, *sentire debet et onus*.

Alderman Jones pressed his point (*ut supra*? This is catching. Ed.) and the Chairman of the General Purposes Committee saying that although the clerk was young (Alderman Jones interposing that *malitia supplet aetatem* was required by the Mayor to withdraw his remark *in extenso*) the Council had confidence in him and his staff *in toto*, asked whether Alderman Jones intended that the Members should do everything in the office *in personam*, even down to licking the stamps.

Alderman Poughilly-Horty, seizing the opportunity, said that obviously the Council had to employ staff but it was a *non sequitur* that the staff were *ipso facto* above criticism.

(There was an unhappy silence at this point, according to the local reporter, but he kept to himself his opinion that the Councillors were Stunned at the Alderman's Resistance: they had obviously expected him to be out for the count by then. The Minutes recorded):

It was then moved by Alderman March, Seconded and carried *nemine contradicente* that the town clerk request Counsel to settle a Defence to the action.

The Meeting, it appears, then passed to Other Business which it dealt with in a Normal Way, but it does not follow that on a Future Occasion a Second Attempt will not be made to suppress the Worthy Alderman.

LOCAL GOVERNMENT AND IMMIGRATION

The city council of Birmingham are to be congratulated upon having been the pioneers last year, in bringing at last into the open some of the problems connected with the accelerated immigration of coloured persons, especially West Indians, to England. Perhaps we should say to Great Britain, but we have no information about the present situation in the Scottish towns. There are problems here which public authorities in this country have largely and too long refused to recognize. For that refusal there were several reasons—some good, some bad. The Colonial Office, on which rests a heavy responsibility, was and is concerned to safeguard the position of coloured persons coming here; in the first place it was interested especially in students, and other members of the more educated classes. These were generally being trained in Great Britain to take up posts of responsibility in the Colonies from which they came. So far, so good. When the immigration of large numbers of coloured persons of the uneducated and labouring classes began, the Colonial Office seems to have regarded this movement chiefly as a means of relieving pressure on the resources of the Colonies from which those persons came. Some of these Colonies had suffered for generations from over population and under employment. Others were hard hit by post-war economics. In 1954, according to a special investigation conducted for *The Times*, the rate of immigration doubled, as compared with 1953. A figure of at least 5,000 was estimated for the first nine months of 1954, bringing the total of West Indians and West Africans together up to some 50,000—for the relative newcomers, exclusive of families settled here before the war. A deputation from certain local authorities suggested to the Colonial Secretary, earlier this year, that he should establish reception centres at the ports, where negroes could be held if they had no prearranged home and work in England. We think on the whole that he did wisely in rejecting that suggestion; the negroes in question are almost all (if not quite all) British subjects, alias Commonwealth "citizens," alias "citizens" of the United Kingdom and Colonies, to use the jargon introduced in 1948. There is therefore no greater power in the government of Great Britain to hold them in a hostel, than there would be if they were white-skinned millionaires. So long as they are allowed to come into this country at their pleasure, it is probably

inexpedient for them to be collected at the ports of entry—better let them be diffused wherever there is work, but since they are "citizens," and since national registration has been done away with, nobody knows precisely where they have gone or what is the total.

One of the lamentable features of the present situation is that these men, by no fault of their own, and mostly through no fault of public authorities in England, have in fact congregated in a few big centres. Birmingham is a notable example, but, if the newspapers can be relied on, the industrial situation in Birmingham is such that for the moment the immigrants can be absorbed. It was stated at the employment exchange in October, 1954, that the arrival of coloured workmen had ceased to be a novelty, and that the exchange could place them. Some employers have found negroes less efficient than white workmen, even in lower ranks of labour, partly because their physique is not suited to our climate, partly because by temperament they are disinclined to work continuously once their immediate needs are satisfied, and as yet their needs are few. But work is still available; there is a certain upgrading of white workers, because negroes take the rougher jobs; the white workers are not undercut, and the cardinal difficulty facing the negro immigrants is accommodation. In London things are not so favourable—the problem of accommodation is even more serious than it is in Birmingham, and there is too little work for those who have flocked in. The newspapers record queues of negro applicants calling day after day at employment exchanges in South London, and day after day being told to come again. Local authorities in London were warned two or three years ago that there was danger of such an influx, but did not take the warning seriously. Some borough councils went out of their way to denounce the warnings as "race prejudice," and there were petitions to the Home Secretary, asking for police action against local organizations which called attention to the increasing danger. The word "danger" is not, we think, too strong. It is not that the West Indian negroes, who form the biggest group of immigrants, are quarrelsome or inclined to crime. Even drug addiction, leading to drug peddling among white women, which has been one accusation (almost certainly too indiscriminate) against the negro immigrants, has been found (we are told by police correspondents) much more frequently among West Africans than among West Indians. Other forms of crime are rare, by comparison with other groups that can fairly be compared. But before the boom in immigration started some far-sighted negroes arrived here and had secured the ownership or tenancy of property, often houses that were going cheap because of disrepair, and in these the newcomers find dwellings, under conditions that would be thought intolerable by even the poorest grades of Europeans. *The Times* reported on January 27 that in Lambeth alone there were some 3,500 West Indians, most of them in a small area of Brixton. As the pace of immigration has increased in the last two years, more and more coloured persons, especially from the West Indies, flocked into these properties. The Birmingham city council have called attention to the fact, duly recorded in *The Times* and elsewhere, that coloured men from Jamaica or Trinidad were sleeping 10 in a room, to the enormous profit of the householder. This is a grave matter.

For a long time England compared with other English speaking countries has been noticeably free from race prejudice of any sort. The reason is that coloured workers (and Orientals) in this country have been comparatively few, and it is only in a limited number of areas that the possible perils from their presence were found serious. In other English speaking countries within the Commonwealth (to say nothing of the United States, which has peculiar problems) racial prejudice has largely arisen out of economic causes—South Africa is, of course, a special case, with causes that do not apply elsewhere. White workers in most such countries have generally feared that their standard of living would be depressed, if Orientals or coloured folk were brought in, particularly if allowed to do skilled work, because coloured workpeople were able and willing to live in a manner satisfactory to themselves upon a lower wage than was needed by the European. In the "White Australia" policy, and the very stringent restrictions which the white trade unions in Rhodesia have succeeded in imposing, the economic motive has predominated.

In the present phase of full employment, there may be room for a large number of coloured workpeople to undertake (especially) heavier tasks, and tasks which for one reason or another the educated English workman of today prefers to leave alone, and employment of the coloured races on such tasks need not preclude their being trained for higher skills, if they are capable and there is room for them in industry.

In Great Britain the trade unions have so far been strong enough, at any rate since the first world war, to prevent undercutting by immigrants of whatever race and colour, and therefore, on the whole, there has been little objection to them on that score. Social difficulties crop up from time to time, as must be expected, especially when the immigrant population is predominantly male. Some relief under this head may be found if it is true, as we have seen stated, that a greater number of coloured women have been reaching London. The difficulties which are now arising are, however, much more those which directly concern local authorities, above all sanitation and housing, and if the negroes are establishing families the housing problem will be greater. *The Times* (to quote again) alleges that the Lambeth borough council have been told by the Ministry of Health that the Minister "can do nothing about the crowded and insanitary conditions in the borough." We do not know whether this is accurate; it may be a "throw back," for the matter is not now one with which the (present) Ministry of Health would be concerned. If the reference is really to the Minister of Housing and Local Government, the statement is a shocking one. Anyhow, whatever can be done or is left undone by governments, local authorities can not neglect obvious and potentially grave sanitary problems. If the local authority does its duty, and abates nuisances and overcrowding, it is faced with the further problem, what to do by way of housing those who are turned out of their overcrowded quarters. Surely it is wrong that such burdens should fall upon a few areas, which happen to be selected for the immigration.

Another aspect of this problem which affects local authorities a good deal is the depreciation of the value of property. It is a matter of common observation that if one or two houses in a street become heavily occupied by coloured persons there is a tendency for those former residents who can move away to do so. There are areas in north London as well as in Brixton, Wandsworth, and elsewhere south of the Thames, where whole blocks of streets have turned into coloured colonies with a grave depreciation. Not only do the houses become slum dwellings, but their rateable value goes down. It is all very well for sentimental and philanthropic persons to say that there ought to be no objection on the part of ordinary English people to living amid the immigrants, but this is to ignore the common feelings (failings if the philanthropists will have it so) of human nature. Just so, when Sir Hartley Shawcross was Attorney-General, pressure was brought to bear from the benches behind him to obtain legislation, forbidding the owner of property to differentiate against coloured persons or Levantines. The effect of such legislation would have been that a landlord who received an offer from one of the protected classes would have

been obliged to accept it, although he would have had the normal liberty recognized by common law to refuse an English tenant whom he thought undesirable. Sir Hartley Shawcross expressed disapproval which he felt to be proper to his office, of any distinction upon grounds of race or colour between one tenant and another, but he was obliged to reject the suggestion of legislation in the sense desired. The refusal of property owners to let to coloured persons is just one aspect of the general problem, that there is little racial hostility, but a deeply rooted dislike of too much mixing. So again, it is all very well for licensing justices to say that they will not tolerate the conduct of a publican who attempts to distinguish between white and coloured customers, but the publican knows well enough that, when his bar becomes known as a haunt of coloured persons in large numbers, his old customers will go elsewhere. The time may come, and we may be moving towards it rapidly, when the equality of all human beings in the eyes of God is accepted as a reason for treating them as equal in all mundane matters also—but human nature has not reached that point. The troubles at West Bromwich and Nottingham, in connexion with coloured transport workers, are proof enough of this. The housing trouble is closely involved with such difficulties in several towns. The indigenous transport worker or other wage earner is inclined to say: "I do not mind the coloured man himself, so long as he does not work for less than the trade union wage, but we have a housing queue in this town, and it will be long enough before our own people can find a home, without having to find houses for outsiders."

The essential step seems to be one which no British Government has yet had courage to take; one which probably no Government will take unless very strongly pressed by local governing authorities, namely to obtain powers from Parliament to control the flow of immigration, making sure that no greater number is received than the industrial economy and the housing resources of this country can absorb. This has been aptly called giving Dominion Status to the United Kingdom. All the fully self governing countries of the Commonwealth claim the right to exclude "citizens" of others, and even the countries under the tutelage of the Colonial Secretary are not considered bound to admit such citizens, even from the United Kingdom. A broadcast in London on March 18, 1955, by the Trade Commissioner for the West Indian colonies, indicated that the movement of population is not at present unrestricted, even as between the islands themselves within the contemplated Caribbean Federation. It is nowadays an anomaly that the United Kingdom alone stands open, to unlimited immigration from all parts of what was once the Empire.

THE MEDIUM FILUM RULE

By A. S. WISDOM

The expression "*ad medium filum viae* (or *aquae*)" refers to an imaginary line in the middle of a road or river and the *medium filum* rule is a rule of construction at common law that, where a property is bounded on one side or the other by a highway or river, the presumption arises that half the soil of the road or half the bed of the river belongs to the owner of the property, unless there are circumstances to rebut the presumption: *Mickelthwait* v. *Newlay Bridge Co.* (1886) 51 J.P. 132. The rule has been applied in particular to (1) highways, (2) rivers, (3) fisheries, and (4) civil boundaries; it does not apply to a railway which is a boundary: *Thompson* v. *Hickman* (1907) 96 L.T. 454.

As regards highways, the general presumption at law is that the property in the soil of a road belongs *usque ad medium filum viae* to the adjoining proprietors: *Cooke* v. *Green* (1823) 11 Price 736, and this rule applies equally to streets in a town as to roads in the country (*Re White's Charities, Charity Commissioners* v. *London Corporation* (1898) 78 L.T. 550), to both private and public roads (*Holmes* v. *Bellingham* (1859) 23 J.P. 503) and the tenure of the adjoining land, whether freehold or leasehold, is immaterial: *Doe d. Pring* v. *Pearsey* (1827) 7 B. & C. 304. Where there is a conveyance of land abutting on a highway, it is presumed that the conveyance passes half the soil of the road, unless there is sufficient in the circumstances or enough in the expression of the instrument to show that this is not the intention of the parties (*Mickelthwait* v. *Newlay Bridge Co.*, *supra*), even though reference is made to a plan annexed and the measurement and colouring exclude the highway: *Berridge* v. *Ward* (1861) 25 J.P. 695. The presumption may be rebutted on proof of sufficient evidence that the soil in the highway is not vested in the owners of adjoining premises: *Beckett* v. *Leeds Corporation* (1872) 36 J.P. 596.

In the case of rivers, the presumption exists that a person whose land abuts on a watercourse owns the bed of the watercourse up to the middle of the stream and, if he owns the land on both sides, the whole bed of the river belongs to him: *Blount* v. *Layard* (1891) 2 Ch. 681. This presumption does not arise in respect of canals (*Chamber Colliery Co.* v. *Rochdale Canal Co.* [1895] A.C. 564), tidal waters (*R.* v. *Trinity House* (1662) 1 Sid. 86), or where the river bed and the adjoining land are in different ownerships. There is some doubt whether the rule is applicable to large lakes having a number of riparian owners: *Marshall* v. *Ulleswater Steam Navigation Co., Ltd.* (1863) 3 B. & S. 732; *Johnston* v. *O'Neill* [1911] A.C. 552. On non-tidal rivers the presumption is that the right of fishing is in the several riparian owners *ad medium filum aquae* and, if the same person is the owner of both banks, he has the entire fishing to the extent of the length of his land: *Tracey Elliot* v. *Morley* (*Earl*) (1907) 51 S.J. 625.

No decisions have been given in the English courts as to how the middle line of a river is to be determined, but it has been suggested (Stuart Moore's *History and Law of Fisheries* (1903) pp. 114–118) by reference to the case of *Hindson* v. *Ashby* (1896) 60 J.P. 484 that the *filum* of the bed of a non-tidal river is to be ascertained by taking the middle line of the river at the ordinary and average state of the river. It would also seem that the *medium filum* of a tidal river is halfway between the low water mark of ordinary tides on each side of the river (*Stuart Moore*, *supra*, p. 118).

The *medium filum* rule also operates in connexion with civil boundaries defined along rivers. Where two parishes are separated by a river, the *medium filum* is the presumptive boundary between them (*R.* v. *Landulph* (*Inhabitants*) (1834) 1 Mood. & R. 393 N.P.) and, where a parish comes down as far as the banks of a river, there is a *prima facie* presumption that the parish extends as far as the middle of the river: *MacCannon* v. *Sinclair* (1859) 23 J.P. 757. In the case of riparian county boundaries it was decided in *R.* v. *Brecon* (*Inhabitants*), *Re Glasbury Bridge* (1850) 14 J.P. 655, that, in the absence of any words in a statute determining the boundary, the ordinary rule of *medium filum aquae* must apply, and the middle of the river continuously was the boundary line between two counties.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 25.

A PROSECUTION UNDER THE NEW STREETS ACT OF 1951

A builder was the first person to be prosecuted at the instance of Worthing corporation in respect of an alleged offence under this Act, and the case was heard by the local magistrates earlier this month. The information and complaint of the town clerk alleged that the defendant between November 23, 1954, and January 20, 1955, did carry out work for the purpose of erecting a building having a frontage on a named private street, the owner of the land on which the said building was being erected or a previous owner not having paid to the council or secured to the satisfaction of the council payment of the sum required, namely £74, under s. 2 of the Act in respect of the cost of street works in that street, contrary to s. 1 of the Act.

For the prosecution, evidence was given that letters referring to the amount claimed had been sent to the defendant by the corporation, and in reply to one the defendant had said that he did not agree to the charge of £74, but that he had no objection to paying when the paving was done.

For the defendant, who pleaded not guilty, it was said that at the time when payment was required of him, in November last year, he was not the owner and although he had been asked to pay £74, the owners had not been approached. Cross-examination of defendant's witnesses elicited who were in fact the owners of the property at the time that plans were passed by the corporation in November last, and who were the present owners of the land. Defending solicitor submitted that there was a serious ambiguity in the Act. It stated, he said, that the owners were liable for payment and, if it was a different person, the erector or builder. Defendant's position, it was urged, had been more that of an agent than anything else. The defending solicitor conceded that an offence had been committed, but urged that it was a highly technical one and he asked for a nominal fine.

Defendant was fined £10 and given one month in which to pay.

COMMENT

The writer has thought fit to report this case in considerable detail, for it is one which illustrates a matter which is of great importance to developers. The case was the first of its kind in Worthing and the writer believes that prosecutions under s. 1 of the Act have been very rare. It is however clear that it behoves builders to ascertain from the local authority their position with regard to the Act before undertaking work which may involve them in liability which is primarily the responsibility of another.

Section 1 (1) of the Act enacts that no work is to be done in connexion with erecting a building which will have a frontage on a private street unless the owner of the land on which it is to be erected, or a previous owner, has paid to the local authority such sum as may be required in respect of the cost of street works in that street. Subsection (2) of the section provides that a maximum penalty of £100 may be inflicted, on summary conviction, on the owner of the land on which the building is to be erected and, if he is a different person, the builder if any work is done in contravention of the preceding subsection. Proceedings under the subsection may only be taken by the local authority. Subsection (3) details 10 cases in which provisions of the section are not to apply and these should be carefully read by anyone who may be likely to bring himself within the ambit of the section.

(The writer is indebted to Mr. R. V. Stapleton, clerk to the Worthing justices, for information in regard to this case.) R.L.H.

No. 26.

OFFENCES UNDER THE FACTORIES ACTS

An old established company carrying on an extensive business as a manufacturer of enamelstone products was summoned to appear at Bishop Auckland magistrates' court on March 7 last to answer four charges preferred by an Inspector of Factories. The first charge alleged that the company, as occupier of a factory which was subject to the Pottery (Health and Welfare) Special Regulations, 1950, had contravened reg. 13 (1) of the said regulations in that it had failed to provide for the use of all persons employed in the potters' shops a suitable messroom as specified in the said regulations and had thereby committed an offence under s. 130 (1) of the Factories Act, 1937. The second charge alleged contravention of s. 1 of the Act in that the company had not kept whitewashed or colourwashed the inside walls and ceilings of a painting shop of the factory. The third charge alleged that the company had contravened s. 42 (1) of the Act in that the washing facilities provided for the use of persons employed in the blunging shed, the casting shops and the painting shop in the factory did not include soap and clean towels or other suitable means of cleaning or drying. The last charge alleged that the company had contravened reg. 9 (2) of the special regulations referred to in the first charge, in that the overalls provided in pursuance of reg. 9 (1) for the use of persons employed in the blunging shed, the casting shops and the painting shop were not washed or renewed weekly.

For the prosecution it was stated that every effort had been made by the Inspector of Factories over a period of years to persuade the defendant company to comply with these important provisions without substantial success. The requirements were not irksome technical provisions but matters of serious concern to the health of the employees. The painting shop had never been whitewashed in the five years it had been used.

For the defendant company, which pleaded guilty to the charges and which had been convicted before the same court in August, 1954, on a charge identical with the first charge referred to above and on four other charges under the Factories Acts, it was stated that the company had a very high reputation with regard to the welfare of its employees. At no time had it been suggested that it had neglected the many provisions for the safety of its workmen. When a messroom was provided some years ago the workmen did not use it, preferring to eat their food in the workrooms. Some washing facilities had been provided and the receptacles for containing the soap had been pulled from the walls. The default with regard to the provision of clean overalls was due to the failure of the workmen to return their overalls to the office each week in order that they could be sent to the laundry.

The court fined the company £5 on the first charge and made an order that a suitable messroom was to be provided before April 30 next. On the second charge a fine of £5 was imposed and an order was made that the walls of the painting shop were to be whitewashed or colourwashed before the same date. On the third and fourth charge fines of £2 were imposed in respect of each charge.

COMMENT

The Pottery Regulations of 1950, which make provision for the health and welfare of workers employed in factories in which there is carried on the manufacture or decoration of pottery, contain stringent provisions.

Regulation 9 obliges the employer to provide for certain classes of workers protective clothing of suitable design and material and subs. (2) provides that the overalls and head-coverings forming part of the protective clothing, are to be washed or renewed weekly.

By reg. 13 a messroom, adequately furnished, and with means of warming food and boiling water is to be provided for all persons employed in any potters' shop and in any place where clay dust is prepared or where flint or quartz milling is carried on.

Section 130 of the Factories Act, 1937, enacts that offenders against regulations made under the Act in relation to factories are guilty of an offence and by s. 131 offences for which no express penalty is provided may be punished by a fine not exceeding £20.

By s. 132 of the Act an offender may, in addition, be ordered by the court to take such steps to remedy the matters in respect of which a contravention has occurred within such time as the court may order, and in the event of default the offender shall be liable to a further fine not exceeding £5 for each day on which the non-compliance continues.

(The writer is greatly indebted to Mr. F. McWilliams, clerk of the Bishop Auckland justices, for information in regard to this case.) R.L.H.

PENALTIES

Halifax—February, 1955. When a policeman, neglecting his duty by failing to parade for duty. Fined £10. Defendant, a 26 year old policeman, turned up at his parents' home in Lanarkshire after being missing a fortnight. He explained that his father and mother were ill. Defendant was charged under s. 12 of the County Police Act, 1839.

Derbyshire Assizes—February, 1955. Motor manslaughter. Four years' imprisonment. Defendant, after drinking 10 pints of beer, drove his lorry home and ran into a man and his wife—the man died.

Bristol—February, 1955. Smoking on a barge loading petroleum. Fined £3, to pay 10s. costs.

Bristol—February, 1955. When master, failing to take adequate steps to prevent smoking on board a barge loading petroleum. Fined £3.

Odiham—February, 1955. Cruelly beating a cow. Three months' imprisonment, to pay £10 costs. Defendant, a 25 year old farm worker, was seen beating a cow over the head, eyes and ears with a stick. Two sticks broke but defendant continued and the beating lasted 15 to 20 minutes. The cow had to be destroyed.

WEEKLY NOTES OF CASES

PRIVY COUNCIL

(Before Viscount Simonds, Lord Morton of Henryton, Lord Radcliffe, Lord Cohen and Lord Somervell of Harrow)

ATTORNEY-GENERAL FOR NEW SOUTH WALES *v.* PERPETUAL TRUSTEE CO. (LTD.) AND OTHERS

January 24, 25, 26, 27, 31, February 1, 2, March 14, 1955

Police—Constable injured through negligence of third person while on duty and subsequently discharged—Claim by Crown to recover amount of salary and allowances and pension paid to police constable.

APPEAL by special leave by the Attorney-General for New South Wales from an order of the High Court of Australia dated March 5, 1952, dismissing an appeal from an order of the Supreme Court of New South Wales, dated March 9, 1951.

A police constable, a member of the New South Wales Police Force, was travelling in a tramcar while on a daily periodic journey between his place of residence and his place of duty. A motor vehicle, negligently driven by the fourth respondent as agent of the third respondent (the first and second respondents being the owners of the vehicle), collided with the tramcar, causing injuries to the constable which disabled him from carrying out his duties. He was later discharged from the police force as a result of the accident. Prior to his discharge, although deprived of his services as a member of the force, the Crown paid him the salary and allowances appropriate to his office, and, on and after his discharge, he was paid a pension in accordance with the provisions of the New South Wales Police Regulation (Superannuation) Acts, 1906-1944. But for the injuries he received, he would not have commenced to receive such pension for a long time. The Crown, in an action *per quod servitium amisit*, claimed to recover from the respondents the salary and allowance already paid, and to be reimbursed in respect of monies which had been already paid, and would thereafter be paid, to the constable under the New South Wales Police Regulation (Superannuation) Acts.

Held, there was a fundamental difference between the domestic relation of servant and master and that of the holder of a public office and the State which he was said to serve; the police constable fell within the latter category, since his authority was original, not delegated, and was exercised at his own discretion by virtue of his office; he was a ministerial officer exercising statutory rights independently of contract; the action *per quod servitium amisit* could not be extended to the loss of service of a person who was the holder of an office regarded as a public office; and, therefore, the action did not lie in the present case and the appeal must be dismissed.

Counsel: *Frank Gahan, Q.C.*, and *J. G. le Quesne* for the Crown; *Viscount Hailsham, Q.C.*, and *Dingle Foot, Q.C.*, for the respondents.

Solicitors: *Light & Fulton* (for the Crown); *Bell, Brodrick & Gray* (for the respondents).

(Reported by G. A. Kidner, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Ormerod and Gorman, JJ.)

R. *v.* BLANDFORD AND ANOTHER

March 7, 1955

Criminal Law—Venue—Receiving stolen property—Persons charged in one county with receiving goods in other counties—Magistrates' Courts Act, 1952 (15 *and* 16 *Geo.* 6 *and* 1 *Eliz.* 2, *c.* 55), *s.* 1 (2) (*b*), *s.* 2 (3).

APPEALS against conviction.

The appellants were convicted at Montgomeryshire quarter sessions of receiving stolen property. The goods which were the subject of the charges in the case of the first appellant were received in Staffordshire and those in the case of the second appellant in the county borough of Southampton. The appellants appeared before the Montgomeryshire justices on a summons issued on October 20, 1954, the thieves having been convicted on September 23, 1954. The reason why the appellants were summoned to appear in Montgomeryshire was that other persons resident in the county and charged with receiving in Montgomeryshire similar property stolen from the same prosecutors had been summoned to appear at the same court.

By s. 1 (2) (*b*) of the Magistrates' Courts Act, 1952, a justice may issue a summons or warrant if it appears to him necessary or expedient, with a view to the better administration of justice, that the person charged should be tried jointly with, or in the same place as, some other person who is charged with an offence, and who is in custody, or is being or is to be proceeded against, within the county or borough. By s. 2 (3) a magistrates' court shall have jurisdiction as examining justices over any offence committed by a person who appears or is brought before the court, whether or not the offence was committed within the county or borough.

Held, that the justices had exercised a proper discretion in issuing the summonses and the court would not interfere. The fact that persons resident in the justices' jurisdiction were being charged with offences so similar or closely connected with the offences with which the appellants were charged that the witnesses for the prosecution, or some of them, would be the same in both cases was a good reason for the justices who issued the summons exercising the discretion vested in them by s. 1 (2) (*b*) of the Act of 1952. Further, the desirability of uniformity in the treatment of the accused persons was a matter which could properly be considered. The summons having been lawfully issued, the committal for trial to Montgomeryshire quarter sessions was rendered lawful by s. 11 (1) of the Criminal Justice Act, 1925. The appeals, therefore, would be dismissed.

Counsel: *P. L. W. Owen* for the first appellant; *H. G. Talbot* for the second appellant; *Hooson* for the Crown.

Solicitors: *Churchill, Clapham & Co.*, for *Richard George & Jenkins*, Newtown; *Kingsford, Dorman & Co.*, for *Argyle & Sons*, Tamworth; *Milwyn Jenkins & Jenkins*, Newtown.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Collingwood, J.)

HARTLEY *v.* HARTLEY

January 28, February 1, 2, 1955

Husband and Wife—Maintenance—Wilful neglect to maintain—Reasonable and honest belief in wife's adultery—Connivance or conduct conducing by husband.

APPEAL from Aylesbury justices.

H and his wife were married in 1937. The wife formed a close friendship with P, who was a married man separated from his wife. For about two years before 1954 P spent most evenings with H's wife. At times they were out late together, and, according to evidence which was accepted, P practically lived at the home of H and his wife. Although H's wife and P were on affectionate terms, there was no proof of adultery. In 1954, after an occasion when, in the presence of H, H's wife and P's wife, P said that he preferred H's wife to his own, H stopped payments to his wife and left their home. H's wife took summary proceedings against H alleging that he had wilfully neglected to provide reasonable maintenance for her. The justices found that H had, at the time when he withdrew from cohabitation, a reasonable *bona fide* belief that his wife had committed adultery with P.

Held, where, in answer to a complaint made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, by a wife against her husband that he has wilfully neglected to provide reasonable maintenance for her, he asserts that he reasonably believed that she had committed adultery, he cannot maintain a defence based on that alleged belief if the wife's conduct has been brought about or actively promoted by him; it is immaterial whether this principle is founded on analogy to the defences of connivance at the adultery or of conduct conducing to the adultery, which defences are mentioned in s. 6 of the Summary Jurisdiction (Married Women) Act, 1895, or is an illustration of the maxim *volenti non fit injuria*; but on the facts in the present case H had neither connived at, nor had he by his conduct conduced to, the conduct of his wife with P, and there was evidence to support the justices' conclusion that H had reasonably and honestly drawn the inference, induced by his wife's conduct, that she had committed adultery with P; and, therefore, the appeal would be dismissed.

Counsel: *Hazel* for the wife; *D. R. Ellison* for the husband.

Solicitors: *Lowe & Co.*; *Cree, Godfrey and Wood*, for *Leather and Stevenson*, Aylesbury.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

ADDITIONS TO COMMISSIONS

KENT COUNTY

Hugh Ronald Balston, Newnham Court, nr. Maidstone.

Mrs. Ethel Mary Barlex, 219, Croyden Road, Beckenham.

Sidney Lewis Best, 203, Bourne Vale, Bromley.

Mrs. Ethel May Busbridge, M.B.E., Twoways, Prestons Road, Hayes, Bromley.

Peter Victor Ferdinand Cazalet, Fairlawne, Tonbridge.

Ernest Leonard Chiverton, Whitfield Lodge, Whitfield, nr. Dover.

Brigadier William Edward Hinchley Cooke, O.B.E., T.D., Wedhampton, Wellington Parade, Walmer.

Mrs. Kathleen Mildred Cox, 138, Invicta Road, Sheerness.

MISCELLANEOUS INFORMATION

REORGANIZATION LEGISLATION

The Commission set up by the Church Assembly to " prepare in consultation with the Church Commissioners a measure to consolidate, with such amendments as may seem necessary or desirable, existing legislation relating to the rearrangement of pastoral supervision and of diocesan boundaries " has now been appointed. The members are: Sir Geoffrey Hutchinson, M.C., T.D., Q.C. (Chairman); The Right Rev. A. G. Parham; Lt.-Col. E. C. Arden; the Archdeacon of Taunton; Mr. O. W. H. Clark: Canon Laurence Brown; Mr. E. H. Johnson; Canon G. S. J. Downes; Mr. T. A. Meade Falkner.

Memoranda for consideration by the Commission should be sent to the Secretary, Church Assembly, Church House, Dean's Yard, Westminster, S.W.1.

LIVERPOOL PROBATION REPORT

Liverpool has its system of police liaison officers and as we understand it this means that some juvenile offenders are dealt with by the police, who see the child and the parent, but do not actually charge such children. This method is not approved everywhere, but it is claimed that it works well.

In his report for 1954, Mr. John Woolfenden, principal probation officer of the city of Liverpool, says: " A few years ago some controversy was raised by my statement that it was ' too easy to become a juvenile delinquent and to start a court record.' The institution of the police liasion officers proves how right that statement was, because several hundred children are not now entered in the court registers each year. So it can now be almost safely assured that those who do appear before the juvenile courts have committed offences, or are showing tendencies, that warrant serious consideration."

It is satisfactory to read that reduced case loads of the individual probation officers enables supervision to be more intensive. As is said in the report, more time for diagnosing and planning enables an officer to move along with more certainty. After-care of prisoners and others has been carried on with the valuable co-operation of the Central After-Care Association and the governors of institutions. Planning for after-care begins long before a man leaves the institution, and the return to society is achieved more naturally. This year it has resulted in 79 *per cent.* of such men and youths completing their period of supervision on a satisfactory basis.

Matrimonial cases have shown some decrease in number, but the 17 and 18 year old show a tendency to increase. Another matter of comment is that whereas until recently nearly all those who sought advice and help came from one class, the position now is that they tend to represent a cross-section of all classes of society.

Mr. Woolfenden was fortunate in being enabled by the permission of the Home Office and the probation committee to accept the invitation of the British Council to visit Israel, Thailand and Indonesia, to exchange views and opinions on penal reform and social welfare with officials and voluntary workers of those countries. Such visits are productive of good results, and in countries where probation work is in its early stages of development a visit from an experienced officer like Mr. Woolfenden must be specially welcome.

A table showing the number of attendances of each member of the probation committee shows that they do not often miss a meeting. Such evidence of interest in the work is encouraging.

COUNTY BOROUGH OF DEWSBURY— CHIEF CONSTABLE'S REPORT FOR 1954

Dewsbury has a population of about 54,000 and an authorized police establishment of 91. On December 31, 1954, the actual strength was 82. The present chief constable was appointed to that office when his predecessor took up his appointment as chief constable of Eastbourne in October, 1954.

Younger members of the force are helped to qualify for promotion by taking part in the West Riding constabulary home study course. Students answer monthly papers after studying textbooks, and their completed papers are marked and are returned to them with model answers. For the educational side of the promotion examination there is a course organized in conjunction with the local education authority, and for this there are weekly classes which are well attended.

Improved accommodation is being provided by alterations to police buildings. There will be a parade room, a report writing room and a dining room, and lockers for the men are being installed in the bathroom.

Her Majesty the Queen visited Dewsbury during her tour of the North of England and on that occasion all members of the force were on duty, and they were assisted by the special constables and by contingents from the West Riding constabulary, the Halifax borough force and the Wakefield city force.

The special constabulary is at present 70 strong. They are not required to do any regular duties, but they assist the regular police when called upon. They also keep in touch with police work by taking part in " Quiz " and " Crime Test " competitions with specials from other forces.

Crime figures show 20 crimes of violence during 1954, against 10 in 1953, due mostly to young adults who " made violent attacks on people often without the slightest provocation." There were also 10 cases of gross indecency in 1954. There were no such cases in 1953. Of all crimes known to have been committed 68·3 *per cent.* were detected. The chief constable repeats what his predecessor said that it is most important that any information should be passed on to the police by members of the public at the earliest possible moment if it is likely to be of any use to the police. Many more juveniles were brought before the juvenile court in 1954 than in 1953, 76 against 43, the increase being due, in the main, to offences of simple larceny. It is reported that 32 adults and 66 juveniles were cautioned in respect of crime and 165 adults and 42 juveniles (including 108 adults for motoring offences) for other offences. No details are given of the circumstances in which the 32 adults were cautioned for crime.

The chief constable agrees with many of his colleagues in thinking that, in road safety instructions, training given to children is without doubt the most important part of the work and the one which pays the greatest dividends. On May 30 the third Road Courtesy Motor Rally was held, in conjunction with the Dewsbury Motor Club. Valuable help was given by the West Riding constabulary. The course was over 46 miles of main and secondary roads, and there were hidden observers to award marks for correct driving. At the conclusion there were brake tests, a vehicle inspection and other tests of driving ability. In our view all such schemes which encourage co-operation and friendliness between the police and the public are very much to be commended.

The sporting activities of the force are mentioned, and it is noted that in the cricket knock-out competition the force won the Savile Cup, which is held for one year by the winner of the competition.

EDUCATION COSTS AND STATISTICS 1953-54

This is the third annual tabulation prepared and published by the Institute of Municipal Treasurers and Accountants jointly with the Society of County Treasurers and is full of vital information about this immense and costly service. Without doubt it is a big job which has to be done: average number of pupils in the year was 6½ million, while the size of the expenditure falling on rates and grants can perhaps be appreciated best by these comparisons with other services:

Service	*Total Net Expenditure in England and Wales*	*Per 1,000 population*
	£ million	£
Care of Children.. ..	15	346
Health Services	40	898
Welfare of the Aged and Handicapped	14	319
Education..	337	7,652

Equally interesting is the continued rise in the cost of educating each child; compare the following figures:

Year	*Number of pupils per full time Teacher*		*Cost per pupil*	
	Primary	*Secondary*	*Primary*	*Secondary*
			£	£
1950-51	30	21	21	36
1953-54	31	20	26	47

Substantial further cost increases have occurred since March 31, 1954, notably in relation to teachers' pay, and more are in prospect: the Burnham Committee have already recommended that women teachers should be paid the same rates as men and this innovation fully implemented will cost £15 million a year.

Because of the size of the relevant expenditure the education grant is the one most important to most county councils and county boroughs; even the equalization grants must take second place to

it. The grant for each education authority is calculated by adding to a figure of £6 per pupil, 60 *per cent.* of net expenditure and deducting the produce of a rate of 2*s.* 6*d.*, and the considerable fluctuations in overall grant percentage which this method produces are illustrated in the return. We quote a few examples:

Authority	*Effective percentage grant on main Education services*
Counties	
Durham	66
Glamorgan	66
Monmouth	66
Surrey	49
Sussex—West ..	49
Sussex—East ..	47
County Boroughs	
St. Helens	66
Walsall	66
Middlesbrough ..	65
Blackpool	44
Bournemouth ..	37
Eastbourne	34

The fact that expenditure otherwise remaining as a charge on rates after deducting these education grants is further reduced in the three first-named counties and county boroughs by substantial equalization grants varying in percentage between 32 and 51 increases disparities in ratepayers' burdens in the named localities.

The return analyses costs per pupil of primary and secondary schools under main heads for each authority and also provides details of the unit costs of school meals. Treasurers recalling from their files past arguments with the Ministry on these unit costs will be interested in the figures of approved cost given for each authority.

VITAL STATISTICS, SEPTEMBER QUARTER, 1954

The Registrar General's quarterly return for the September quarter, 1954, has been published.

The home population of England and Wales has, according to the Registrar General's estimates, increased by over 500,000 since census day (April 8, 1951).

The home population of England and Wales is estimated to have been 44,274,000 (21,288,000 males, 22,986,000 females) at June 30, 1954.

There was an estimated increase of 184,000 persons in the year ending June 30, 1954. Persons aged 65 years and over are estimated to have increased by 108,000 and children aged 0-14 years by 96,000, while the remainder of the population—those aged 15-64—is estimated to have decreased by 20,000.

The total population of England and Wales, is given as 44,480,000 (21,492,000 males and 22,988,000 females).

The number of marriages registered in September quarter, 1954, was 104,315, which was 1,160 lower than the figure for the third quarter of 1953 (105,475). The average for the corresponding quarters of the five years 1949-53 was 109,886.

The final number of cases of poliomyelitis notified in the quarter was 880 and the provisional number of deaths was 45. Both these figures are substantially lower than in any September quarter since 1948.

An analysis of deaths registered in the June quarter shows that deaths from respiratory tuberculosis (1,657 deaths) were nine *per cent.* lower than in the corresponding period of 1953.

Cancer deaths as a whole were slightly higher—21,826 as compared with 21,451 in June quarter, 1953 ; but deaths from cancer of the womb were substantially below those in any quarter in the preceding three years at least.

Accidental deaths rose to 3,633 (3,272 in June quarter, 1953). This was mainly accounted for by increases in accidental poisoning (243 deaths compared with 177 a year earlier), falls (1,249 compared with 969), and burns (166 compared with 146). The number of suicides (1,415) was the highest since June quarter, 1939.

The main figures of births and deaths in the September quarter have been previously published in the Registrar General's weekly return. The following is a summary :

There were 167,070 births registered, representing a rate of 15·0 per thousand population. In the corresponding quarter of 1953, there were 172,976 births registered, giving a rate of 15·6. The average rate for the third quarter over the five years 1948–1952 was 16·0.

The 3,918 stillbirths registered represent 22·9 per 1,000 total live and stillbirths. This rate is 1·9 higher than for the third quarter of 1953.

The number of deaths registered was 104,112 representing a death rate of 9·4 per 1,000 population ; this compares with 8·9 in the third quarter of 1953 and an average rate for the third quarters of the years 1948–1952 of 9·2.

The infant mortality rate was 21 per 1,000 related live births ; this was 1·2 per 1,000 lower than that for the third quarter of 1953, and was a record low rate for any quarter.

PERSONALIA

APPOINTMENTS

Mr. John Whyatt, Q.C., Attorney-General, Kenya, has been promoted to be Chief Justice of Singapore in succession to Sir Charles Murray-Aynsley, who is soon retiring. Mr. Whyatt's promotion has been approved by the Queen. Mr. Whyatt was called to the bar by the Inner Temple in 1927 and was in private practice from 1927 to 1937. He was appointed Assistant Crown Solicitor, Hong Kong, in 1937 and Crown Counsel, Hong Kong, in 1938. After service for the Colonial Office in Hong Kong, then Australia, Mr. Whyatt returned to Hong Kong in 1946 as Custodian of Enemy Property. In 1948 he was appointed Attorney-General of Barbados and was transferred to the post of Attorney-General and Member for Legal Affairs, Kenya in 1951.

Mr. Alfred John Ainley, Puisne Judge, Uganda, has been appointed Chief Justice of the Eastern Region, Nigeria, when the High Court is established there. Mr. Ainley's appointment has been approved by the Queen. Mr. Ainley, who is 48, was called to the bar at Gray's Inn, in 1928, and practised in Britain until 1935, when he was appointed a magistrate in the Gold Coast. He was promoted to his present post in 1946.

Mr. A. G. Graves has been appointed clerk of the peace for Middlesex and clerk to the magistrates' courts committee. Mr. Graves entered the service of the Middlesex county council in 1923 and for the past 20 years has been deputy clerk of the county council and of the peace.

Mr. A. P. M. Nixon, assistant solicitor in the town clerk's department at Southend-on-Sea, Essex, for nearly four years, has been appointed senior assistant solicitor in the town clerk's department at Oxford, in succession to Mr. H. J. A. Astley, whose appointment to a similar position with Bucks. county council was reported in our issue of February 12.

Mr. T. R. Gaylor has been appointed assistant chief constable of Worcestershire, in succession to Mr. F. W. Knight, whose sudden death occurred recently.

Miss E. M. C. Patient has been appointed probation officer to serve the South Shields, Durham, county borough area of the Durham combined probation area, beginning her duties on May 1, 1955. Miss Patient who is 23 years of age obtained a Diploma of Social Studies at the University College of Leicester in 1953. While at college, she spent a year of her spare time acting as a voluntary youth club leader. Subsequently she was accepted for training by the Home Office Probation Advisory and Training Board and is at present completing her training in the Stockton-on-Tees probation office of Durham combined probation area.

Mr. J. A. R. Pimlott has been appointed secretary of the Monopolies and Restrictive Practices Commission, with the approval of the Board of Trade. Mr. Pimlott succeeds Mr. William Hughes, who will be returning to the Board of Trade shortly at the end of his period of secondment. Mr. Pimlott is an Under Secretary of the Board of Trade and will be seconded by that department to the Commission on taking up his appointment.

Mr. Robert Lyall Paul has been appointed by the Board of Trade, Scotland, to be Custodian of Enemy Property for Scotland, in the place of Mr. Oliver Gilmour Elliott.

RESIGNATIONS AND RETIREMENTS

Mr. R. F. Lyne, O.B.E., recorder of Hereford has resigned with effect from April 1, 1955. Mr. Lyne has been recorder since 1935.

OBITUARY

Mr. Alfred Cheshire, former clerk to Billericay, Essex, urban district council, has died.

Mr. David Cadvan Richards, deputy chief constable of Breconshire from 1939 to 1946, has died at the age of 68.

REVIEWS

Stevens' Elements of Mercantile Law. Twelfth Edition. By John Montgomerie. London: Butterworth & Co. (Publishers) Ltd. Price 17s. 6d. net.

Our own legal readers, who for the most part are engaged in other than mercantile pursuits, may not be so likely to need this book as some of their learned brethren. Nevertheless it should not be overlooked. Mercantile law is a broad heading which covers several topics required of the law student, some of which are also of daily importance to the practitioner, even in magistrates' courts and local government. The present work is in size and scope suitable for students, and the fact that it has reached the twelfth edition is evidence of its utility. There is, however, a good deal in it which will be helpful, at least as a reminder and sometimes for purposes of reference, to those who have advanced beyond the student stage. There is a handy conspectus of the law of contracts in 130 pages, which many lawyers might find it useful to have at hand. Agency, partnership, and companies comprise Part II of the book; agency in 40 pages involves many principles which come into the conduct of local government. Part III, comprising some 250 pages, deals with many different types of contract, among which the chapters on the sale of goods, negotiable instruments, and insurance, have an importance going beyond specifically "mercantile" transactions. There is a short chapter upon arbitration, which is another matter with which local government practitioners are constantly concerned: they will find the Arbitration Act, 1950, annotated in *Lumley* from the local government point of view, but it will be worth while to look at the subject from the commercial side as well. Bankruptcy, the protection of commercial ideas, and stock exchange transactions, are rather specialized, but they go to round off the book for the purposes of instructing students, so that solicitors among our readers, who have articled pupils or are otherwise concerned with tuition, can avail themselves of the learned editor's explanation of these rather intractable ideas. The book also contains a valuable glossary of legal and semi-legal terms, and a list of common abbreviations, including those for the various series of law reports. Among these it may be mentioned that *Chorley and Tucker's Leading Cases on Mercantile Law* is included, and references are given to it in the footnotes, for the benefit of students who find this more convenient than visiting a library and looking up the original reports. In regard to reports, we regret that the publishers have fallen short of their established and admirable practice of providing a full apparatus of reference. The table of cases gives dates and no more, and the references in the footnotes (for the most part) only one report. We have spoken of this before, when reviewing law books issued by other firms, and have commended Messrs. Butterworth's normal practice of complete references. This is even more important in a work designed wholly or largely for students than in a major work designed for the practitioner. The latter knows where to go for an alternative report, and can often dispense with looking at the report itself, but the student ought to be made to do so—he is however naturally disposed to shirk the task, and it is a pity to provide him with any excuse for idleness. However, this blemish is no doubt due to the expense of publishing at the present day, and a laudable desire to keep the price of the book as low as possible; it is the only feature upon which a reviewer could adversely comment. The size of the page throughout is convenient, and the printed matter is pleasantly arranged for reading. The index, without being overloaded, appears to be complete, and is so arranged that whatever is required can be quickly found. Altogether a workmanlike and valuable addition to the student's library, and to the working library of the general practitioner in law.

Shaw's Guide to Superannuation for Local Authorities. By Frank Crowther. Second Edition. London: Shaw & Sons, Ltd. Price 19s. 6d. net.

When war broke out in 1939 the position in regard to superannuation of local government officials had been standardized by the Local Government Superannuation Act, 1937, with the alterations made by the Act of 1939. There were persons who had pension rights under earlier Acts, whose position had to be assimilated, but it looked as if, when their cases had worked themselves out, the law and the problems of administration would be reasonably straightforward. The second world war necessitated Pensions Increase Acts, and finally the Local Government Superannuation Act, 1955, made so many changes that it became necessary to reconsider the whole position, and there has been a stream of statutory instruments. It is highly desirable that the law shall be consolidated but, meanwhile, an up-to-date textbook is a necessity, if the legal and financial staffs of local authorities are to deal with the detailed problems that arise without an undue loss of time.

The book now before us is relatively short, fewer than 200 pages if the schedule of forms and records at the end be omitted from the count. Within that compass, it gives all the information that is needed in the form of comprehensible and comprehensive paragraphs. The book is provided with a marginal thumb index, which will be found convenient for ready reference, and with a rather brief index of conventional type printed at the beginning instead of in the usual place. There is also a full table of contents, with tables of statutes, statutory instruments, and ministerial circulars. Essentially, the book is a guide to administration, to be kept on the official's desk for daily use, rather than a law book. Within the limitations imposed by this purpose, we expect to find it useful, and that the same verdict will be given by our readers.

Rent Control. Second Edition. By Dennis Lloyd and John Montgomerie. London: Butterworth & Co. (Publishers) Ltd. Price 37s. 6d. net.

The first edition of this work appeared in 1949, and it has been kept up to date for practical purposes by supplements. The enactment in 1954 of the Housing Repairs and Rents Act and the Landlord and Tenant Act has now made it impossible to state the law of rent control within the limits of a textbook five years old with further supplements. A new edition thus became inevitable, and the learned authors (one of whom is Reader in English Law in the University of London) have taken the opportunity to re-examine some propositions previously stated, and to reduce the length of some former explanations. Notwithstanding this, the complications of statute law and judicial development have appreciably increased the book's size. It remains, however, one of the most convenient textbooks on its subject, as well as among the most reliable and readable. There is a particularly useful explanation of the differences between old and new control, which we have found to be an obstacle to the younger generation of lawyers and local government officials, who never had personal acquaintance with the Rent Restriction Acts as they existed at the end of the first world war. To take another rudimentary matter, there is a valuable explanation of the meaning of the expression "rent," which looks obvious but in reality is complex, and may crop up in other contexts. (We have just had to consider what it means in a rating statute.) Subjoined to this is an analysis of some of the more difficult decisions, pointing out that there are still unsettled points about the meaning of this superficially comprehensible expression.

The position of the successor to a tenancy is re-examined in the light of *Moodie* v. *Hosegood* [1951] 2 All E.R. 582, and the effect is duly noticed in at least three different chapters. The awkward and possibly illogical position, of deserted wives remaining in occupation of premises affected by the Acts, is dealt with as lucidly as the Court of Appeal has allowed. Here, and in relation to the death of a contractual or statutory tenant, the learned authors do not shrink from calling attention to moot points, but equally their exposition will guide the busy practitioner through the maze of judicial interpretations, where the Acts have impinged upon the common law. The portion of the book which deals with furnished premises has necessarily been revised, to take account of the crop of decisions and the further legislation since the book first appeared in 1949. After this comes a summary, which will be handy in practice, of the law and the methods used in court proceedings in the High Court and the county court, and there is a final chapter devoted to conveyancing. In our experience, we have found that busy solicitors tend to forget the possible incidence of the Rent Restriction Acts, upon the relation between parties to a contract for the sale of land, and we have had our attention drawn also to obscurities which have not been faced by textbook writers or settled by the courts, about the relation between the Acts and compulsory purchase.

After the expository portion of the book which occupies 300 pages, come the appendices giving the text of statutory provisions now in force, beginning with the Act of 1920 and ending with the two Acts of 1954. Once again, the mere printing of these provisions is enough to bring home the need for their consolidation, and furnishes a reproach to successive Parliaments and Governments, which have shrunk from tackling that task. In this subject unlike many others the statutory instruments to be considered are mercifully few; those which exist are of course duly printed up to the end of 1954, and there is a handy list of court forms to conclude the book.

All in all, the work is one which can be warmly recommended to every practising solicitor, and for addition to the office library of every local authority.

BOOKS AND PUBLICATIONS RECEIVED

Woodfall's Law of Landlord and Tenant. Twenty-fifth edition. Supplement (to February 1, 1955). By Lionel A. Blundell and V. G. Wellings. London: Sweet & Maxwell, Ltd. Price 6s. 6d. net.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

POLICE COUNSEL

At question time in the Commons, Mr. S. S. Awbery (Bristol C.) asked the Secretary of State for the Home Department if he was aware that when police appeals were made against the decisions of a magistrates' court the police obtained the assistance and advice of counsel; and would he circularize all magistrates' courts reminding them that they also had the right to obtain the services of counsel if they considered it necessary in the preparation of their case.

The Secretary of State for the Home Department, Major Lloyd George, replied that he had no reason to think that justices needed any guidance on that matter, but if Mr. Awbery would let him know of any difficulties that had arisen he would gladly look into them.

INDICTMENT RULES

Mr. Hector Hughes (Aberdeen N.) asked the Attorney-General if his attention had been called to the fact that injustice might result from the present law and procedure relating to the preferment of indictments in criminal proceedings; and if he would now take steps to rectify that and to ensure that, whenever a person was committed for trial on indictment, the proper officer of the court of trial should be obliged to supply a copy of the indictment free of charge to the accused person five days at least before the trial.

The Attorney-General replied that he did not think that any amendment of the law on those lines was called for. He was not aware that any injustice or hardship had resulted from the operation of the indictment rules in their present form and there were serious practical objections to Mr. Hughes' proposal.

CONVICTED MURDERERS

Replying to Mr. W. Teeling (Pavilion), Major Lloyd George stated in a written answer that in the years 1925-54, excluding the period from April 14 to June 2, 1948, 358 males who were convicted in England and Wales of murder were executed; 36 were certified insane after conviction and removed to Broadmoor; and 244 had their sentences commuted to imprisonment for life. A decision to recommend the commutation of a death sentence to one of imprisonment for life was taken after consideration of all the circumstances of the case, and there were few instances in which a decision was taken solely because of the mental state of the prisoner or solely because of his age. In no case was a decision taken that a reprieved murderer should be detained in prison for the rest of his life.

Later, Mr. Teeling raised on the Adjournment the case of James Weaver who was sentenced for murder and later reprieved in 1928. He asked for an opportunity to be given to provide extra evidence and information for the granting of a pardon.

Major Lloyd George said that he had no reason to think that the decisions which the courts and the Home Secretary reached at that time on the evidence before them were not the right ones. He said that a scintilla of doubt in the case had never been resolved one way or the other, and he would like to see that doubt removed. He was very ready to consider and investigate any new information.

HORROR COMICS BILL

The Children and Young Persons (Harmful Publications) Bill has been considered in Committee of the whole House and has so far emerged without amendment.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 22

RURAL WATER SUPPLIES AND SEWERAGE BILL, read 2a.
PUBLIC WORKS LOANS BILL, read 2a.
COPYRIGHT AND TELEVISION EXHIBITING RIGHT BILL, read 2a.
TRANSPORT (BORROWING POWERS) BILL, read 2a.
FISHERIES BILL, read 3a.

Thursday, March 24

NATIONAL SERVICE BILL, read 2a.
TRUSTEES SAVINGS BANKS (PENSIONS) BILL, read 2a.
ROAD TRAFFIC BILL, read 3a.
PUBLIC WORKS LOANS BILL, read 3a.
TRANSPORT (BORROWING POWERS) BILL, read 3a.

HOUSE OF COMMONS

Monday, March 21

OIL IN NAVIGABLE WATERS BILL, read 2a.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

NORTHUMBERLAND ACCOUNTS, 1953-54

With reference to your report on the council's annual accounts for 1953-54 (p. 134, *ante*) I think it only fair to inform you that the windfall of £113,000 which you report as due to the penny rate products being underestimated, was exceptional and resulted mainly from the revaluation of colliery hereditaments which took place during 1952-53.

The rate income credited to general county revenue account from this source for the three previous financial years was as follows:

1952-53	£30,083
1951-52	£11,067
1950-51	£15,845

Yours faithfully,

K. W. ARNOLD,
County Treasurer.

County Treasurer's Office,
County Hall, Newcastle upon Tyne, 1.

[We are interested to have Mr. Arnold's explanation of his exceptional windfall: the figures for previous years now given bear out our main point that penny rate products are commonly underestimated. —*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

OBSCENE PUBLICATIONS

In his letter published in your issue of March 12, 1955, your correspondent Mr. Alec Craig deals with cases where a claim is made to goods seized by the Customs, in which the choice between proceedings in the High Court or in a magistrates' court rests with the Customs authorities, and adds, "If they choose a magistrates' court there is no appeal." It is true that there is no appeal against the choice of a magistrates' court, but Mr. Craig refers to a decision of the Divisional Court in 1950, in which it was pointed out there was no right of appeal from the decision of the magistrates, and I interpret his letter as indicating that this is still the position.

The law, however, is now to be found in para. 11 of sch. 7 to the Customs and Excise Act, 1952, which gives an express right of appeal to quarter sessions in these cases.

Yours faithfully,

M. G. WHITTOME,
Solicitor for the Customs and Excise.

King's Beam House,
Mark Lane,
London, E.C.3.

[We are obliged to Mr. Whittome for pointing out the right of appeal. Speaking for ourselves we do not, in view of that right, object to possession by the Customs of a choice of forum. But the real defects of this legislation remain. The only person who receives notice of seizure and is entitled to claim the seized object, without which claim there are no proceedings in court at all, is the person who, of all those concerned in the case of a book, has least interest in the book's merits, *viz.*, the owner of the book as a physical object. For him it will normally be better business to make no claim than to risk money in legal proceedings. No judicial decision is then required for destruction of the book, so that its author and publisher, whose personal and professional reputation are involved, have no right to be told of the book's seizure. Indeed, even when the owner does claim, and the book's character is thereupon put before a magistrates' court, the author and publisher have no *locus standi* to appear or to be told of the proceedings.—*Ed., J.P. and L.G.R.*]

NOTICES

CHANGE OF NAME OF URBAN DISTRICT

The urban district council of Billericay has, pursuant to s. 147 of the Local Government Act, 1933, and with the consent of the Essex county council, resolved that as from April 1, 1955, the name of the authority should be changed from Billericay to Basildon.

"CO-INHABITING MISCHIEF"

The Report of the Royal Commission on Marriage and Divorce is not likely to be published before the late summer, and the hopes and fears of thousands must remain suspended. Meanwhile the anomalies of the present law continue to cause widespread hardship and, it is feared, tend to bring that law itself into disrepute. It is a mystery to many observers why an institution which, *par excellence*, calls for a human approach should be treated with a rigid legalism, conforming to the letter rather than the spirit of what is called public morality, and out of line with nearly every other civilized nation.

The reformers, equally with their opponents, deeply deplore the breakdown of marriages, the disruption of home-life, and the material and moral harm done to the children. There is no cleavage of opinion on this issue, nor on the ills of society to which these symptoms point. But there are fundamental divergences in diagnosis which in turn lead to the prescribing of varying remedies, some of them less calculated to attack the germ of the disease than to palliate or conceal the symptoms. It is as if a surgeon, observing a rash on the body of the patient, should remove the spots with a scalpel and declare the cure complete. Treatment without diagnosis can only have deleterious results.

It is a truism to state that divorce is not a cause, nor even a symptom, of the social ills that we deplore; it is a drastic surgical operation sometimes made inevitable by a grave pathological disorder. Preventive methods should aim, first, at guidance and education before marriage, and at the discouragement of impulsive unions between the incompatible and the emotionally immature. For most legal purposes, persons under 21 years of age are regarded as incompetent to decide matters of economic import—generally speaking, they have neither testamentary nor contractual capacity, and they are precluded from acquiring and disposing of many kinds of property except under strict safeguards. Yet a boy or girl of 16 and upwards is legally capable of entering into matrimony, subject only to the formal consent of parents or guardians who may be irresponsible, or of magistrates who have little or no opportunity of thoroughly investigating the question. This is in itself absurd; a large proportion of the marriages that come to grief are those where the parties were emotionally immature, and one obvious reform would be to raise the legal age-limit. Until 1929 it was as low as 14 for boys and 12 for girls—a survival of the ancient Semitic concept that legal capacity should be governed by the attainment of puberty. Whatever the conditions in oriental countries when the rule was first formulated, there can be no doubt that in modern Europe it is an anachronism, and that few, if any, people attain emotional maturity before the early twenties—and not always then.

The breakdown of a marriage, in the proper sense of the term, is not a single, sudden event but a continuous process—a gradual undermining of the mutual respect, affection and singleness of purpose that must (one imagines) have been present at the start. There has come about, little by little, an emotional change on one or both sides. An enlightened society should surely apply the medical analogy—first diagnose, then treat, the disorder. If the diagnosis shows it likely to yield to remedial treatment—medical, psychological, advisory or conciliatory—then, say the reformers, spare no effort so long as there is reasonable prospect of a cure. Submission to conciliatory efforts should be obligatory, for some fixed period, before resorting to more drastic measures. Only when it is clear that the breakdown is irretrievable should the remedy of divorce be open. And, when that unhappy stage is reached, the form of proceedings should not be punitive, as (by a miserable fiction) it is treated under the present law, but remedial—the drastic final expedient in an intolerable situation.

Every case, it is submitted, should be considered on two criteria. First, is it compatible with the physical, mental and moral well-being of the parties and their children (if any) that the marriage should, in law, continue to subsist ? Secondly, is its continuance compatible with public decency and morality in the broadest sense ? Every practitioner is acquainted with cases where the parties have been estranged for years, with no prospect of ever desiring to see each other again. Where the kernel of mutual affection has rotted and withered away, can public policy demand the careful preservation of the husk or shell—the bare legal tie? In face of these two weighty considerations, the present engrossment of the Courts with hair-splitting technicalities as to where the fault lies seems both uncharitable and irrelevant.

Lest it be suggested that these views are revolutionary and subversive, we quote the opinion of a great Englishman, equally famed as man of letters and moralist, and endowed with a high religious sense. John Milton, the greatest Puritan of his own or any other age, has given us *The Doctrine and Discipline of Divorce, restor'd to the Good of both Sexes, from the Bondage of Canon Law and other Mistakes, to Christian Freedom, guided by the Rule of Charity*:

> "What thing more instituted to the solace and delight of man than marriage ? And yet the misinterpretation of some Scripture directed mainly against the abusers of the law for divorce given by Moses hath chang'd the blessing of matrimony not seldome into a familiar and co-inhabiting mischiefe: at least into a drooping and disconsolate household captivity without refuge or redemption . . . That indisposition, unfitness or contrariety of mind, arising from a cause in nature unchangeable, hindering and ever likely to hinder the main benefits of conjugall society, which are solace and peace, is a greater reason of divorce than naturall frigidity, especially if there be no children and that there be mutuall consent."

The reforms he advocated, three centuries and more ago, are those directed to the same ends today:

> "That the ordinance which God gave to our comfort may not be pinn'd upon us to our undeserv'd thraldom, to be coopt up, as it were, in mockery of wedlock, to a perpetuall betroth'd loneliness and discontent, if nothing worse ensue."

And, finally, Milton had very forceful views upon the impropriety of discussing the intimate affairs of marital life in public courts of law:

> ". . . not authorizing a judiciall Court to tosse about and divulge the unaccountable and secret reasons of disaffection between man and wife, as a thing most improperly answerable to any such kind of triall . . . it being also an unseemly affront to the sequester'd and veil'd modesty of that sex, to have her unpleasingnesse and other concealments bandied up and down and aggravated in open court by those hir'd masters of tongue and fence."

Strong words, these: but, coming from the author of *Areopagitica* and *Paradise Lost*, surely meriting respectful consideration from the legislators to whose hands the future of marital institutions in this country will shortly be confided.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Time for application—Defendant at sea within 12 months after birth of child.*

An application is due to come before this court at the instance of a single woman, for maintenance in respect of a child. The facts are, as I understand them:

1. The child was born on August 2, 1953.

2. The alleged father is a sailor. He was residing in town X during December of 1953 and went away shortly afterwards. He has only quite recently returned.

3. The application was filed in court on November 3, 1954. The matter was listed for hearing on November 13 but by arrangement between the solicitors concerned it has been put off until November 23.

The question is, that as the application was not lodged until November 3 which is more than 12 months after the date of birth of the child—Is it in order ?

It seems, the alleged father having ceased to reside within the jurisdiction of the court during the 12 months after the date of birth, an application can be made within 12 months after he has returned and again resides within the jurisdiction. SAXTA.

Answer.

The application is in order. The alleged father ceased to reside in England within 12 months of the birth of the child, and the mother applied for her summons within 12 months of his return. [This query was answered by post in November last.—*Ed., J.P. and L.G.R.*]

2.—Land—*Letting of public slaughter-houses.*

The council have provided, many years ago, public slaughter-houses within the borough. During the last war the premises were leased to the Ministry of Food but, with the decontrol of meat in July last year, the public slaughter-houses are now in full operation under the management and control of the council. The number of local butchers slaughtering their own beasts in the slaughter-houses is very small, and the slaughter-houses are mainly used by a wholesaler who slaughters beasts and also sells the carcases from the premises. He also undertakes to slaughter beasts for local butchers who are unable to slaughter their own beasts. A scale of charges has been fixed by the council under s. 2 of the Slaughter-houses Act, 1954, the charges being on a headage rate, but the wholesaler is alleging that this operates unfairly against him as almost 80 *per cent.* of the use of the slaughter-houses is made by his firm. He has asked the council if it will be possible for him to take a lease, or be given a licence to use facilities at the public slaughter-houses, in exchange for the payment of an annual rent or licence fee, on condition that he makes sufficient facilities available for such local butchers as wish to slaughter their own beasts. I have looked through the Food and Drugs Act, 1938, and the Act of 1954 and can find no definite authority which says the local authority could not grant such a lease or licence. A local authority's main duties under the Acts are to ensure that sufficient slaughtering facilities are available in their district, and it is felt that the terms "public" and "private" as used in the Acts merely differentiate between local authority premises and those which are privately owned and licensed.

Could you inform me whether there is any technical objection under the Acts to the wholesaler's proposal? A. SEASIDER.

Answer.

In our opinion this can be done by a proper lease under s. 164 of the Local Government Act, 1933. *Lumley's* note on that section is informative. We should prefer a lease, carefully drawn to cover all foreseeable conditions, to any less formal arrangement.

3.—Landlord and Tenant—*Housing Repairs and Rents Act, 1954—Disrepair.*

Referring to P.P. 6, at 119 J.P.N. 170, I wonder whether the answer given is correct having regard to s. 27 (1) of the Housing Repairs and Rents Act, 1954. Surely the effect of that subsection is that a tenant of an "old control" house, whose rent has been increased after notice of increase under s. 2 (1) (*c*) or (*d*) of the 1920 Act, may be granted a certificate of disrepair notwithstanding that no notice of repairs increase has been served under the 1954 Act ? The opening words of s. 26 are modified in the manner provided by s. 27 (1) (*b*).

ATHU AGAIN.

Answer.

P.P. 6 at p. 170, *ante*, referred to para. (*g*) in an article at 118 J.P.N. 698, which paragraph was dealing only with s. 26 of the Act of 1954. The querist asked whether a certificate (which we took to mean a certificate under s. 26) could be issued when a notice under s. 25 had not been given. The same article had earlier called attention to s. 27 of the Act of 1954, and when answering the query upon s. 26 we did not think it necessary to refer to s. 27 again. We are, however, indebted to our present correspondent for mentioning it, and also to another correspondent who informs us that the Ministry of Housing and Local Government have suggested using the same forms under s. 27 as are (for purposes of s. 26) prescribed in sch. 5 to the Housing Repairs (Increase of Rent) Regulations, 1954.

4.—Licensing—*Permitted hours—Fixing so as to secure uniformity where petty sessions area enlarged by order of Secretary of State.*

By a petty sessional divisions order a fresh area has been added to the existing division. The permitted hours for the two licensed houses in the added area are different from the rest of the division and the order provides that the licensing justices at the general annual licensing meeting must make an order under part VII of the Licensing Act, 1953, fixing uniform permitted hours.

I shall be glad of your opinion:

(*a*) Can the licensing justices make such an order without a proposal to vary being made ?

(*b*) If a proposal has to be made can this be done by the licensing justices themselves or do you consider it would be more satisfactory if the police lodged the proposal.

(*c*) If not, how can the licensing justices deal with the matter.

O. HIRLE.

Answer.

Inasmuch as the order made by the Secretary of State requires that permitted hours shall be fixed so as to be uniform throughout the licensing district and, thereby, to conform with ss. 101–102 of the Licensing Act, 1953, we think that the order itself may be treated as operating as such a proposal as will satisfy the requirements of the Licensing Rules, 1921.

5.—Magistrates—*Jurisdiction and powers—Non-county borough with separate commission and quarter sessions—Offence by borough justice—Trial outside the borough ?*

I have seen your answer to a P.P. at 115 J.P.N. 608. A similar case has arisen in the non-county borough with a separate commission of the peace in which I am clerk to the justices. The police are applying for a summons against a borough justice for a summary offence. From all points of view it would be better if the case could be heard before a neighbouring petty sessional division of the county, or before county justices brought into the borough for the purpose. This borough derives its court of quarter sessions from its seventeenth century charter and if, as I suppose, it was therefore exempt from the jurisdiction of the county justices before the passing of the Municipal Corporations Act, 1835 (Municipal Corporations Act, 1882, s. 154), it seems to me that the county justices still have no jurisdiction. I presume that, in view of s. 248 (3) of the 1882 Act, even if, as was very likely the case originally, the borough was within the limits of a liberty, the position cannot have been affected by the Justices of the Peace Act, 1949.

Can you suggest any possible alternative to the case coming before the borough justices ? SEALION.

Answer.

If our correspondent's assumption is correct we agree that by s. 154 (2) of the 1882 Act the county justices have no jurisdiction. Also, there may well be in an old charter like this a non-intromittent clause specifically excluding the jurisdiction of the county justices. The position is not affected by the Justices of the Peace Act, 1949.

We cannot suggest any alternative to the case coming before the borough justices.

6.—Nuisance—*Public nuisance—Keeping of wild animals.*

In a residential part of this borough a black Himalayan bear is kept in a cage which is on wheels and is situate on private land, but this land is easily accessible from an adjoining road. The roof of the cage is made of a type of sheet metal and is in some places in need of repair, and in my opinion it is possible that the bear could enlarge the hole in the roof and escape through it. No nuisance exists under the provisions of the Public Health Act, 1936, and the bear is well cared for, but I am concerned as to what steps can be taken to compel the owner to repair the roof of the cage. *Stone*, 86th edn., on p. 168 under the heading Public Nuisances, refers to "keeping of ferocious animal without proper control" as a public nuisance (*3 Burn's Justice*, 30th edn. 1032)." The animal is *ferae naturae* but this, so far as I am aware, does not necessarily mean that it is ferocious in the sense of the above-mentioned reference, and in fact the owner states that it is docile and

was originally a pet, and this is borne out by the fact that it has been customary for children and others to feed the bear. From the point of view of negligence or nuisance, it appears that there is nothing unlawful in keeping an animal which is *ferae naturae*, and also that no action will lie in tort until some actual damage has been caused by the animal. I am, however, concerned with the public nuisance aspect of the case, and it is my opinion that no action will lie in this respect unless it can be shown that the animal is ferocious while in the cage, or until such time as it escapes and displays a ferocious disposition. I shall be pleased to know if you agree with this opinion, and what steps you would suggest in order to compel the owner to repair the cage. A. TYCHO.

Answer.

We agree with your view of the law. A wild animal, even one which can be dangerous, is not necessarily ferocious; nor indeed is a ferocious animal for purposes of the common law indictment necessarily a wild animal.

At the same time, the kindliest of bears might turn nasty if it escaped and was attacked or frightened, and the owner ought to take precautions. Repair of the roof does not sound like a costly matter, and it is puzzling why the owner does not do it. The best suggestion we can make is that his civil liability for any damage it does, however unforeseen, should be explained to him: *May* v. *Burdett* (1846) 16 L.J.Q.B. 64; *Filburn* v. *People's Palace Co.* (1890) 55 J.P. 181; *Besozzi* v. *Harris* (1858) 1 F. & F. 93, *per* Crowder, J. The creature might, for instance, in all innocence injure a child or cause a motor accident. The legal position is quite different from that where an animal *mansuetae naturae* escapes.

7.—Pensions, etc.—*Possession of documents contrary to Criminal Justice Act*, 1925, *s.* 37—*Family allowances.*

I shall be glad to know whether you consider that the above section refers to documents issued in connexion with the Family Allowances Act, 1945, as amended by the Family Allowance and National Insurance Act, 1952, and the Widows', Orphans' and Old Age Contributory Pensions Act, 1936.

It seems to me that the point to be decided is whether these allowances are payable out of a grant which may be made out of the "Consolidated Fund of the United Kingdom in pursuance of any Act for *civil non-effective services*." The operative words seem to be "civil non-effective services." I do not know whether there has been any legislation on the interpretation of these words which would serve as a guide as to whether the section applies to the Family Allowance Act, 1945, and the Widows', Orphans' and Old Age Contributory Pensions Act, 1936. SERBRIDGE.

Answer.

In our opinion the section does not apply, because the services are financed out of moneys provided by Parliament and not out of the consolidation fund.

8.—Public Health Act, 1936, s. 269 (1) (i)—*Movable dwellings.*

In your answer to my query for "Practical Points" dated November 1, 1954, you state that as a practical course, the council might refuse to issue a licence under the above-mentioned section, if the applicant does not himself mention a limit in his application. Since the section mentions no limit whatsoever, upon what authority is this course suggested? A. QUO WARRANTO?

Answer.

In our article already quoted in answering your earlier question, we went into this more fully than can be done in the Practical Points column. Briefly, the matter can (we think) be put thus:

Subject to the applicant's right of appeal, the council are not bound to grant any licence.

If they refuse altogether, and he appeals, they can properly reply—"We are not satisfied that after five (or 10, or 20) years of use for movable dwellings this land will still be suitable. It may have become foul. We are therefore not prepared to grant a licence which may endure for even longer, if the applicant remains occupier of the land." We should expect the justices to uphold them.

If we are right so far, they can tell the applicant that this is their view, but that if he cares to make an application for a limited period (say five years) they will consider it favourably, and will, at the end of the five years, be prepared to consider a fresh application if the land is still in a suitable state for the purpose.

9.—Road Traffic Acts—*Conspiracy to defeat the ends of justice—A, an unlicensed driver gives B's name when stopped by police, B produces his licence and insurance certificate at named police station and states he was driver.*

Jones is stopped by a policeman at H whilst driving a car belonging to his next door neighbour Smith. He gives his name as Smith and, having no driving licence or insurance certificate, is served in the name of Smith with a notice to produce these documents at a police station. Next day Smith goes to this police station, says he was stopped the previous day at H and produces the notice and his driving licence and insurance certificate (which covers only the owner of the car). It is clear that at this point Jones and Smith are acting in collusion, but on subsequent investigation both allege that the car was taken without Smith's consent.

Jones is charged with taking the car without consent, having no driving licence or insurance, and failing to give his name on request. What offences have been committed by Smith, either alone or in company with Jones? JOPSON.

Answer.

On the authority of *R.* v. *Sharpe*; *R.* v. *Stringer* [1938] 1 All E.R. 48, we think that Jones and Smith can properly be charged with conspiring together to defeat the ends of justice.

It might also be argued that Smith, in presenting himself at the police station as the driver previously stopped and then showing his licence and certificate as being those of that driver was "using" the licence and the certificate with intent to deceive, contrary, in each case, to s. 112 (1) R.T. Act, 1930. In that event Jones could be charged with aiding, abetting, counselling and procuring the commission of these offences by Smith.

10.—Theatres—*Excise licence for sale of intoxicating liquor—To whom granted.*

The clerk of the urban district council has obtained a 12 months' justices' theatre licence for the council's pavilion. There is a bar adjoining, and it is intended that the clerk shall apply to the excise authority for a licence to sell intoxicants during the time the theatre is open.

If the council then decided they could not themselves run their own shows, or the bar, is it possible to put out to tender the theatre and bar jointly, or to separate the two? If so, are there any further steps necessary? If it is not possible to do this, as the matter stands now, can you suggest a suitable method? Would the excise grant the bar licence to anyone other than the holder of the theatre licence?

It will be interesting to know how this matter is dealt with in other similar small resorts. NEVO.

Answer.

A licence under the Theatres Act, 1843, may not be granted except to the actual and responsible manager for the time being of the theatre (*see* s. 7) and it must be in this capacity that the clerk of the council has become the holder of the licence. It is by virtue of holding this licence that the clerk of the council is enabled to apply to the excise authorities for a retailer's on-licence for the sale of intoxicating liquor (Customs and Excise Act, 1952, s. 150 (2)).

There is no provision in the Theatres Act, 1843, for a transfer of the licence under that Act; therefore, if the management of the theatre is transferred to another person, a new licence must be applied for: it will then, we think, be possible for the excise licence to be transferred to the new holder of the theatre licence (*see* Customs and Excise Act, 1952, s. 236). In our opinion, a person other than the "proprietor" of the theatre would require a justices' licence as authority for selling intoxicating liquor at the theatre (*see* Licensing Act, 1953, s. 164 (2) (*d*)).

So far as we have information on the subject, a local authority in the circumstances outlined in the question usually would let its pavilion to a tenant who would himself be the holder of the licence under the Theatres Act, 1843, and the appendant excise retailer's on-licence.

11.—Water—*Charges—Differentiation between consumers.*

Section 126 (1) of the Public Health Act, 1936, empowers a local authority who supply water under that Act for domestic purposes to charge in respect thereof a water rate which is to be assessed on the net annual value of the premises supplied. There is provision for the fixing of a minimum charge applicable in all cases to premises supplied with water. My authority have for years levied a rate of 3*s. per annum* for domestic supplies in respect of each £ of rateable value of the premises supplied, up to and including £50, and above that 1*s.* 6*d.* in respect of each additional £ of rateable value. A minimum charge of £1 *per annum* is prescribed. It has now been suggested that any rate levied should be uniform and that the authority have no power to levy a lower rate on the rateable value in excess of £50. PALT.

Answer.

The method of charge described in the query differs from the differential method upheld by the Court of Appeal in *Northampton Corporation* v. *Ellen* (1904) 68 J.P. 197, but the reasoning of the Master of the Rolls supports it. The method might be challenged as favouring the richer consumer, but we do not think the challenge would succeed.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*Contd.*)

Amended Advertisement

CITY OF OXFORD

Justices' Clerk's Office

Appointment of Third Assistant

APPLICATIONS are invited for this appointment from male persons experienced in the work of a Justices' Clerk's Office. Applicants should be competent typists; and they should have completed, or be otherwise exempt from National Service.

The salary will be equivalent to the Clerical Division of the National Scales of Salaries, *i.e.*, £495—£545 (by three increments), but this may be subject to adjustment in the event of any national award in respect of Justices' Clerks' Assistants.

The appointment will be superannuable, subject to medical examination, and to one month's notice on either side.

Applications, stating age, education and experience, together with the names of two persons to whom reference may be made, must reach me not later than April 11, 1955.

A. JOHN BROUGHTON,
Clerk to the City Justices.

Town Hall,
Oxford.

COUNTY OF SOMERSET

Appointment of Female Probation Officer

THE Probation Committee for the Somerset Combined Area invite applications for the appointment of a full-time female Probation Officer. The appointment will be subject to the Probation Rules 1949-54 and salary will be paid in accordance with these Rules, subject to superannuation deduction. The selected candidate will be required to pass a medical examination. Applicants must be not less than 23 and not more than 40 years of age, unless at present serving as full-time Probation Officers.

Applications, giving age, qualifications, experience, and the names of three referees, should reach me not later than April 23, 1955.

Canvassing will disqualify.

E. S. RICKARDS,
Clerk of the Peace.

County Hall
Taunton.

BOROUGH OF SURBITON

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor in the Town Clerk's office. Salary in accordance with the special grade (£780 × £30—£900 per annum, plus London Weighting), the point of entry depending on experience of the successful applicant. Applicants must have had experience in conveyancing and advocacy, and previous local government experience is essential.

Applications, stating names of two referees, to be submitted to the undersigned not later than April 16, 1955. Canvassing, either directly or indirectly, will disqualify, and applicants must state whether or not to their knowledge they are related to any member or senior officer of the Town Council.

JOHN H. H. CRUNDELL,
Town Clerk.

Council Offices,
Surbiton.

BOROUGH OF SLOUGH

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with a scale ranging from £690—£900 per annum. An applicant who has had not less than two years' legal experience from date of admission will be paid a salary within the foregoing scale of not less than £780 per annum. The appointment will be subject to one month's notice and to the National Conditions of Service. The Local Government Superannuation Acts will apply and the selected applicant will be required to pass a medical examination before appointment.

Applications, endorsed "Assistant Solicitor," stating age, qualifications and experience, together with the names and addresses of two persons to whom reference may be made, must reach the undersigned not later than April 16, 1955.

Canvassing, or failure to disclose any known relationship to a member of senior officer of the Council will disqualify.

NORMAN T. BERRY,
Town Clerk.

Town Hall,
Slough.
April 1, 1955.

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Application forms obtainable from the undersigned, to whom they should be returned with the names of three referees, and endorsed "Appointment of Assistant Solicitor." Closing date April 16, 1955. Canvassing will disqualify.

EDWARD S. SAYWELL,
Clerk of the Council.

Council Offices,
Northwood, Middlesex.
March 30, 1955.

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